

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2022

Public Authority: City of Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
West Yorkshire
BD1 1HY

Decision (including any steps ordered)

1. The complainant requested information from City of Bradford Metropolitan District Council ("the Council") about legal expenses relating to the inquest into the death of Andrew Hall. The Council stated that because the information was held only on behalf of the coroner, it was not held for the purposes of FOIA.
2. The Commissioner's decision is that the Council does hold the requested information for the purposes of FOIA and so it was not entitled to rely on section 3(2) of FOIA to refuse the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request, on the basis that any information falling within the scope of the request is held by the Council for the purposes 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 FOIA and may be dealt with as a contempt of court.

Background

5. Andrew Hall died in 2016 shortly after having been restrained by police whilst in police custody.
6. In the lead up to the inquest in to his death the Assistant Coroner ruled that police officers and a custody nurse could give evidence from behind screens.
7. This ruling was challenged by Andrew Hall's family. Proceedings were heard in the High Court in 2019 and then the Court of Appeal in October 2020. The Court of Appeal reinstated the Assistant Coroner's decision. Bradford Council's Legal Services department represented the Assistant Coroner in the court proceedings. Bradford Council was not a party to the proceedings.
8. The inquest took place over 10 weeks from April 2021. Counsel to the inquest was appointed.

Request and response

9. On 6 April 2021, the complainant wrote to the Council and requested information in the following terms:

"Inquest touching the death of Andrew Hall

Please disclose the total amount claimed in legal expenses, in respect of the above, for the periods ended 31.3.2017; 31.3.2018; 31.3.2019; 31.3.2020; 31.3.2021.

To include, but not limited to:

Representation for the Coroner before and at:

Pre-inquest hearings (Ref 03287-2016)

Judicial Review (Case ref: CO/3140/2019)

Court of Appeal (Case refs C1/2019/2881, 2893, 0355) Supreme Court - Permission application heard 30th March, 2021 but no court reference available as yet.

2. Please also disclose the number of interested parties to the inquest, apart from the coroner, funded from the Council's budget.

3. Finally, please provide the sum budgeted to spend on the subject inquest in the financial year ended 31st March, 2022.”

10. The Council responded on 4 June 2021. It refused to provide the requested information. It stated that the information requested is not disclosable under FOIA as the Council does not hold this information for its own purposes but holds it solely on behalf of the Coroner who is not a public authority.
11. Following an internal review the Council wrote to the complainant on 5 June 2021. It upheld its original position.

Scope of the case

12. The complainant contacted the Commissioner on 16 July 2021 to complain about the way his request for information had been handled.
13. This notice covers whether the Council holds the information set out in paragraph 9 above, for the purposes of FOIA.

Reasons for decision

Section 3(2) - information held by a public authority

14. Section 3(2)(a) of FOIA states that information is “held” by a public authority if it is held “otherwise than on behalf of another person”.
15. Therefore, if information is held only on behalf of another person, including a “legal person” such as an organisation, it is not “held” for the purposes of FOIA, and does not need to be considered for disclosure in response to a request made under FOIA.
16. The Commissioner is satisfied that the Coroner, described on the Courts and Tribunals Judiciary website as “an independent judicial officer”, is a separate legal entity from the Council and is therefore a separate “person” within the meaning of FOIA.
17. His task, therefore, is to determine whether the Council, as it has asserted, holds the requested information set out in paragraph 9, above, only on behalf of the Coroner. If the information is held to any extent by

the Council for its own purposes, then it will be held for the purposes of FOIA.

18. The Commissioner's guidance, Information held by a public authority for the purposes of FOIA¹, explains that whether information is held by a public authority depends on the facts of each case. There are various factors that assist in determining whether the public authority holds the information for the purposes of FOIA.
19. As the guidance explains, factors that may indicate that the information is held solely on behalf of another person include:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic.
20. Factors that would indicate that the information is also held by the public authority to some extent for its own purposes include:
 - the authority provides clerical and administrative support for the other person, whether legally required to or not;
 - the authority controls access to the information;
 - the authority itself decides what information is retained, altered or deleted;
 - the authority deals with enquiries about the information; or
 - costs arising from holding the information are included in the authority's overall budget.

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

21. However, as the guidance emphasises, each case needs to be viewed individually to determine whether a public authority holds information for its own purposes, or solely on behalf of another person.
22. The Commissioner asked the Council to explain how and why the information was held, including whether it had any access to and control over the requested information.
23. The Council's response focused on the fact that it has certain obligations under the Coroners and Justice Act 2009 and the Coroners Allowances, Fees and Expenses Regulations 2013.
24. The Council explained that it is the designated relevant authority for the West Yorkshire Coroner's area as defined in the Coroners and Justice Act 2009. It is therefore required to pay on behalf of the Coroner or reimburse the Coroner allowances, fees and expenses payable under the Coroners Allowances, Fees and Expenses Regulations 2013. This includes the administration of reimbursement of legal expenses reasonably incurred when proceedings are issued against a Coroner.
25. It also explained that in addition to Bradford, the West Yorkshire Coroner's area also covers the local authority areas of Calderdale and Kirklees. The Coroner's area is funded by the three local authorities proportionately with respect to their populations. As the designated relevant authority for the West Yorkshire Coroner's area the Council administers the reimbursement of legal expenses reasonably incurred when proceedings are issued against a Coroner on behalf of the Coroner and invoices Calderdale and Kirklees Councils for their proportion of the costs of the Coroner Service.
26. The Council's position is that the requested information is solely held on behalf of the Coroner, an independent judicial officer who is a separate legal entity from the Council and therefore not held by the Council for the purposes of FOIA.
27. The Council argues that, although its finance team arranges payment of the relevant expenses as required under the Coroners Allowances, Fees and Expenses Regulations 2013, the requested information is not needed for any of the Council's own functions as it does not undertake coroner functions.
28. The Commissioner questioned whether Council staff had any access to and control over the information, the reason for the access and what they did with the information.
29. The Council responded with the following explanations regarding Council's staff's access to and use of the information:

- "Council officers appointed by the Council pursuant to section 24 Coroners and Justice Act 2009 have access to the information, for example the Coroner's Services Manager."
 - "Officers in the Legal Team will also have access to certain information when representing the Coroner in legal proceedings, and when negotiating fees on behalf of the Coroner and then receiving the fee notes for example when counsel to the inquest is instructed."
 - "Officers in the Legal Team will liaise with Calderdale and Kirklees Councils on costs on specific legal cases/inquests and therefore also have access to some of the information."
 - "Council officers when the Coroner notifies them of additional expenditure under the 2013 Regulations and finance officers as detailed above also have access."
 - "Finance Officers and managers in the Council's Corporate Resources department will also have access to certain information for budget purposes i.e. to know how much the Coroner's service is costing and the proportion to be paid by Bradford Council and the proportion to be paid by the other two authorities. For accounting purposes the cost centre sits in the Council's legal and democratic services service part of the Council's Department of Corporate Resources. There is no separate entry in the Local Authority published accounts for the Coroner."
30. The Council also highlighted that as the relevant authority for the coroner area it has an obligation under section 24 of the Coroners and Justice Act 2009 to provide whatever officers and other staff are needed by the coroners for that area to carry out their functions.

The Commissioner's decision

31. In his guidance, the Commissioner describes an older case² which considered whether information held by a local authority was held only on behalf of a Coroner. In that case, the information in question was the transcript of a Coroner's hearing. The First-tier Tribunal found that the local authority held the information only on behalf of the Coroner, noting that the Coroner had sole control of the information, and had statutory authority to determine who had access to it. The Tribunal also

² *Digby-Cameron v Information Commissioner* (EA/2008/0010, 16 October 2008)

commented that, in its view, "ownership" of the information lay with the Coroner.

32. However, the guidance also notes that: *"There will be cases when a local authority may hold information originating from the Coroner in its own right. For example, it is possible that following a road traffic accident a local authority could obtain a copy of the Coroner's report in order to consider, in its capacity as highways authority, whether any road safety measures are necessary."*
33. In this case, the requested information is financial information about the cost of the Coroner's Service. The Council is responsible for funding the Service and invoicing Calderdale and Kirklees Councils for their proportion of the costs of the Service. The Council's own proportion of the costs come from its legal and democratic services budget. It is therefore not the case that the Council has no access to, use for, or interest in the information, nor that it is merely providing storage facilities.
34. The fact that the Council has a legal obligation under the Coroners and Justice Act 2009 and the Coroners Allowances, Fees and Expenses Regulations 2013 to fund the Service and administer the reimbursement of legal expenses does not negate the fact that it has an interest in the cost of a service that is funded from its budget.
35. More broadly, the fact that the Council has a legal obligation to provide administrative support to the Coroner detracts from rather than supports the argument that the Council holds the information solely on behalf of the Coroner. In fact the Council holds the information to allow it to carry out its own legal obligations.
36. The Commissioner considers that the information is held by the Council at least to some extent for its own purposes, most significantly in relation to managing its budget.
37. The Commissioner is not satisfied that the information is held solely on behalf of the coroner. Therefore his decision is that the information is held by the Council for the purposes of FOIA and that the Council was not entitled to rely on section 3(2) of FOIA to refuse the request.
38. The Council is now required at paragraph 3 of this decision notice to issue a fresh response to the request, on the basis that any information falling within the scope of the request is held by the Council for the purposes of the FOIA.

Right of appeal

39. 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

40. 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.
41. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
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SK9 5AF