

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 July 2022

**Public Authority:** Central Bedfordshire Council

**Address:** Priory House  
Monks Walk  
Chicksands  
Shefford  
Bedfordshire  
SG17 5TQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information with regards to Children with Disabilities Services. Central Bedfordshire Council (the council) refused the request under section 21 of the FOIA – information reasonably accessible. The Commissioner’s decision is that the council has incorrectly applied section 21 of the FOIA.
2. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request which does not cite section 21 of the FOIA.
3. 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.

## Request and response

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4. On 11 January 2021 the complainant made the following information request to the council:

"1. The Children with Disabilities Services current threshold criteria by which they decide whether a child with a disability will be accepted on the basis that the child requires a specialist social care service.

- Please can you also tell me when these criteria were last reviewed and updated?
- Please also provide the previous version of the document.
- Are there any specific exclusions to the criteria?

2. The policy and/or guidance by which Children with Disabilities Services decide whether children who are referred to the service meet the threshold criteria.

- If there is no such policy/guidance, please can you tell me how the decision is reached as to whether a disabled child meets the criteria?

3. The Children with Disabilities Services assessment of need for services procedure.

- If there is no such procedure/policy, please can you tell me how the assessment is carried out?

4. The policy/procedure by which a Parent Carer Needs Assessment is carried out?

- If there is no such policy/procedure, please can you tell me how the assessment is carried out?"

5. The council responded on the 15 January 2022 confirming it holds the information and applied section 21 of the FOIA – information accessible

by other means – providing the complainant with a link<sup>1</sup> to a page on its website “Special Education Needs and Disability – Local Offer”.

6. The complainant requested an internal review on 28 May 2021 as she was unable to locate the information she requested from the link provided.
7. The council acknowledged the request for an internal review on 2 June 2021.
8. The complainant complained to the Commissioner on 27 August 2021 stating that no internal review has been carried out by the council.
9. The Commissioner wrote to the council on 28 September 2021 asking that it conduct an internal review within 10 working days.

### **Scope of the case**

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10. The complainant contacted the Commissioner further as no internal review had been received following the 10 working days. She has also complained that the link provided takes her to the main page of the Local Offer, however, she has been unable to find the specific information requested.
11. On 11 May 2022 the Commissioner asked the council again to carry out an internal review. To date, the council has not done so.
12. The scope of the case is for the Commissioner to determine whether the council has correctly relied upon section 21 of the FOIA.

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<sup>1</sup>

[https://www.centralbedfordshire.gov.uk/info/15/special\\_educational\\_needs\\_and\\_disability\\_-\\_local\\_offer](https://www.centralbedfordshire.gov.uk/info/15/special_educational_needs_and_disability_-_local_offer)

## Reasons for decision

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### Section 21(1) of the FOIA – Information reasonably accessible

13. Section 21 of the FOIA states:

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

14. Paragraph 19 of the Commissioner's guidance<sup>2</sup> on section 21 of the FOIA references the Tribunal decision *Christopher Ames v Information Commissioner and the Cabinet Office (EA/2007/0110)*, which stated:

"The Tribunal expressed doubt that, where a public authority is asked for a very specific piece of information which it holds, it would be legitimate for the authority to tell the applicant that the information can be found on a large website (such as that of the Hutton Inquiry), even if the applicant is well informed. In other words, it is unlikely to be reasonably accessible to the applicant if a large amount of searching is required in order to locate the information. In such circumstances, the authority would be expected to provide a precise link or some other direct reference as to where the information could actually be found."

15. The Commissioner's guidance at paragraph 20 goes on to say that "information, although generally available elsewhere, is only reasonably accessible to the applicant if the public authority:

- knows that the applicant has already found the information; or
- is able to provide the applicant with precise directions to the information so that it can be found without difficulty."

16. The council provided the complainant with the link to the "Special Education Needs and Disability – Local Offer" webpage however the complainant has made it clear she has been unable to locate the specific information requested. The Commissioner has also reiterated this to the council.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

17. As the council has not provided any precise direction to the information, it is not clear whether any of the requested information is reasonably accessible to the complainant.
18. The Commissioner's decision, therefore, is that the council has incorrectly applied section 21 of the FOIA to the request.
19. The Commissioner requires the council to provide the complainant with a fresh response to the request that does not rely on section 21. In relation to each part of the request this fresh response must confirm or deny whether the requested information is held. If the requested information is held, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.

### **Other matters**

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20. The Commissioner considers it necessary to highlight that for both this case and case IC-126595-L9V2, the council has failed to issue an internal review, even after several requests for it to do so from the complainant and the Commissioner.
21. The Commissioner would expect the council to be very much aware of the FOIA Code of Practice<sup>3</sup> (the Code). It is not clear why the council has failed to carry out internal reviews in these cases, but this failure has resulted in a missed opportunity to correct the issues with the initial response. The council must ensure that it carries out prompt internal reviews in future.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## Right of appeal

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22. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**