

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2023

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested information about the decision to sign a Memorandum of Understanding (MoU). East Riding of Yorkshire Council (the Council) provided some information and stated other information was not held. During the course of the Commissioner's investigation the Council identified some additional information which it provided to the complainant. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 10 January 2023, the complainant wrote to the Council and requested information in the following terms:

"Following the update at the end of last year shared by the PCF which stated:

'On the 28th November the PCF were notified by [name of Council officer redacted] that CONTACT now have the completed paperwork from the LA regarding the MOU. This means that the second tranche of DFE funding will be released to the forum.'

I wondered if I could please request a copy of the MOU as well as any and all documentation that relates to the LAs overturned decision on this including any meeting minutes as it relates to an ongoing concern I have raised with ERYC? I'm hoping these documents are in the public domain and won't require me to submit a FOI request?"

3. The Council responded on 23 January 2023 and provided a copy of the MoU. The Council stated that it did not hold any information relating to the second part of the request for documentation relating to "the LAs overturned decision on this including any meeting minutes" . The Council upheld this position in its internal review response dated 24 January 2023.

Scope of the case

4. The complainant contacted the Commissioner on 10 February 2023 to complain about the way their request for information had been handled.
5. During the course of the Commissioner's investigation the Council confirmed that all minutes of all Special Educational Needs and Disabilities (SEND) Board minutes were available on its website. It provided the complainant with a link to the information and also provided extracts from the relevant minutes relating specifically to the signing of the MoU.
6. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any further recorded information falling within the scope of the request of 10 January 2023.

Reasons for decision

Section 1 – general right of access

7. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
8. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is

not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

9. The Council advised the Commissioner that all information relevant to the request is held electronically on its internal Send Sharepoint system and on the Local Offer webpage¹, which is the public facing portal that the Council uses to communicate with parents, carers and children/young people. In addition searches were undertaken within Outlook. The Council confirmed that the search terms used included Memorandum of Understanding, MOU and Local Offer.
10. The Council explained to the Commissioner that as the information requested was very specific and much of the information relevant to the request was created recently, it was easily located within its filing systems using the keywords/topics listed in the request.
11. The Council provided the complainant with a copy of the MoU with its initial response. In terms of meetings held where the MoU was discussed, the Council confirmed that the minutes of all meetings where the MoU was discussed are available on the Local Offer webpage. During the course of the Commissioner's investigation the Council acknowledged that it had not referred the complainant to these minutes and explained that this was because of previous dealings with the complainant relating to the subject matter. As the complainant has had previous exchanges with the Council around the same/similar topics as his FOIA request, the request was handled as routine business rather than formally under the FOIA. In addition, as the complainant is involved in the subject matter, from a parental point of view, the Council assumed that they would be aware of ongoing matters with the Parent Carer Forum (PCF), and the information on the Local Offer webpage. However, as mentioned earlier in this notice, during the Commissioner's investigation the Council provided the complainant with a link to the Local Offer webpage, and the extracts from relevant minutes of meetings where the issue of the MoU was discussed.
12. In correspondence with the Commissioner, the complainant referred to a number of specific meetings at which they believe the issue of the MoU was discussed. The complainant stated that they understood that meetings between the Council and the PCF took place on 21 November 2022, just prior to 13 June 2022, on 13 June 2022 and 20 June 2022. The Commissioner specifically raised queries around these meetings with the Council

¹ <https://eastridinglocaloffer.org.uk/>

13. The Council confirmed that a meeting did take place on 21 November 2022 with the PCF steering group and it was aware that a number of issues were discussed, including the MoU. The Council advised that no minutes or informal notes were taken by officers who attended this meeting. The meeting in question was chaired by the PCF and any notes or minutes of the meeting would have been taken by the PCF as it was their meeting.
14. In relation to meetings on or around 13 June 2022, the Council confirmed that it checked electronic and paper diaries and it had been unable to confirm exactly what meetings took place around this time. However, its Director acknowledged that meetings facilitated by the external consultant involved did take place around this time. The Council confirmed that any meetings that did take place were not Council meetings and no minutes or notes were taken by officers who attended. Any minutes or notes that may have taken would have been taken by the external consultant who facilitated the meetings and are not held by the Council. The Council again confirmed that any notes or minutes of any meetings that it holds have either been provided to the complainant or are publicly available on its Local Offer webpage.
15. The Commissioner understands that the complainant is not convinced that they have been provided with all the information falling within the scope of their request. It is not the Commissioner's role to establish what information a public authority *should* hold, or whether it has a requirement, statutory or otherwise to hold certain information. The Commissioner's role is to make a judgement on whether the information *is* held on the civil standard of the balance of probabilities.
16. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request other than that which is has already disclosed.

Right of appeal

17. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF