

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2024

Public Authority: Sandwell Metropolitan Borough Council

Address: PO Box 2374
Oldbury
B69 3DE

Decision (including any steps ordered)

1. The complainant has requested information from Sandwell Metropolitan Borough Council (the Council) regarding the decision to use the COVID Outbreak Management Fund ('COMF') to purchase and convert buses.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information within the scope of the request, beyond what it has already provided.
3. The Commissioner also finds that the Commission breached section 10(1) and 17(1) of FOIA by failing to communicate information or issue a refusal notice within 20 working days.
4. The Commissioner does not require further steps.

Request and response

5. The complainant originally made a request for information regarding the Council's considerations and decision to buy two "youth buses".
6. On 27 October 2023, the complainant then wrote to Council and requested information in the following terms:

"Clarification 1 - there has been no documentation disclosed as to why this major capital expenditure was permitted under COMF but simply

an assertion that this was permissible. Where is the documentation showing how this decision was arrived at please?

Clarification 2 - has the contract for conversion been awarded yet and, if so, to whom and for how much please."

7. The Council responded on 19 December 2023. It provided some information within the scope of the request, citing section 40(2) where redactions had been made. The Council also referred the complainant to information which was already in the public domain for the second part of their request, and confirmed that it did not hold any further information within the scope of the request.
8. On 15 July 2024 and 5 August 2024, the Council issued its final response providing further information within the scope of the request, but maintained that section 40(2) applied to some of the requested information.

Scope of the case

9. The complainant contacted the Commissioner on 13 February 2024 to complain about the way their request for information had been handled.
10. Despite the additional disclosures from the Council, the complainant advised the Commissioner that they still had concerns that further information was held. The complainant did not raise any concerns with the application of section 40(2).
11. Based on the above, the Commissioner considers that the scope of his investigation is to determine on the balance of probabilities whether the Council holds any additional information within the scope of the request. As the complainant did not raise any concerns over the application of section 40(2), the Commissioner will not be considering the Council's reliance on the exemption in his decision.

Reasons for decision

12. As the Commissioner's guidance¹ explains, when he receives a complaint disputing the amount of information a public authority holds, he isn't required to prove beyond doubt that the public authority does or doesn't
-

¹ [Determining whether we hold information | ICO](#)

hold further information. Rather, he makes a decision based on the civil standard of the 'balance of probabilities' – that is, more likely than not.

13. The Council provided the Commissioner and the complainant a brief background regarding the proposal and decision to fund the 'youth buses' using the COVID Outbreak Management Fund ('COMF').
14. It stated that the acting operating director of Children and Education services made a request, to the Finance Business partner for children services, for the 'Youth Bus' to be considered for funding from COMF.
15. The Finance Business Partner for Children Servicers stated that the proposal was to be considered at the Leadership Team meeting. During this Leadership team meeting the 'Youth Bus' proposal was presented and approved by the team. This information was reflected in the meeting minutes which have been provided to the complainant.
16. The Council confirmed that there had been a trail of correspondences relating to this matter and, on receipt of the request, it had requested electronic searches be undertaken in staff members' mailboxes. It assured the Commissioner that, despite the fact that the then Director of Public Health and s.151 Officer had since left their roles, it had still undertaken searches in their mailboxes for information within the scope of the request.
17. The Council confirmed that the search terms used during the electronic searches were "Buses" "Youth Buses" and staff were advised to look more specifically in relation to "the purchase being funded by COMF."
18. In response to the Commissioner's investigation, the Council conducted a further search using additional search terms of: "Covid Grant Update", "Covid Grant Expenditure" and "Additional Covid funding".
19. The Council confirmed that any information located during the searches had since been disclosed to the complainant and that it does not hold any additional information.
20. The Council informed the Commissioner that, due to the nature of the request, there was a business purpose for the Leadership meeting notes and the recorded decisions of Cabinet members approving the purchase of the 'youth buses' using COMF. The Council again confirmed that this information had been disclosed in response to the request.
21. Alongside the electronic searches, the Council also made enquiries to relevant members of staff to determine whether any additional information within the scope of the request was held. The Council advised that the relevant members of staff it consulted were the current Youth Service manager, the Interim Head of Finance Business

Partnering, the former Director of Children Services and Education, the current Assistant Director – Children’s Commissioning, Partnership and Involvement, the current intern director of Public Health and the UKHSA.

22. The Council confirmed that it had also enquired to see if any paper records were held which would fall into the scope of the request. Despite these enquires, it confirmed that no paper records were held which would fall into the scope of the request.
23. The Council concluded that it is under a statutory obligation to retain any Covid-19 related data for the purposes of the Covid inquiry and that no information within the scope had been deleted.
24. The complainant advised that whilst the Council had now provided additional information, the correspondences released is still very limited. The complainant also advised that although it is clear from the information provided that the Director of Public Health and the s.151 Officer were involved in this decision throughout, there is a very limited amount of correspondence involving them
25. The Complainant also noted that in the most recent disclosure, the Council specifically states that the Director of Public Health "approved" this scheme on 28th February 2023 but the documentation showing this has not been produced.

The Commissioner’s decision

26. Having considered the Council’s searches and the complainant’s further arguments, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any additional information within the scope of the request.
27. Looking specifically at the complainant’s arguments, the Commissioner notes that the Council specifically advised that the decision regarding the ‘Youth Bus’ being funded by COMF was approved by “the leadership team” and that “the then Director of Public Health was an attendee” The Commissioner is satisfied that this demonstrates that the decision was not made by one specific individual, which supports the Council’s position that further evidence is not held.
28. Whilst the Commissioner acknowledges the complainant’s concerns that there are a limited number of emails specifically between the Director of Public health and the s.151 officer, the Commissioner is satisfied that the Council has conducted adequate searches in both of these individual’s inboxes for information within the scope of the request.
29. He further considers that the search terms used by the Council would be appropriate to locate any information within the scope of the request.

Procedural matters

30. The Commissioner finds that the Commission breached section 10(1) and 17(1) of FOIA by failing to communicate information or issue a refusal notice within 20 working days.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Mike Lea-O'Mahoney
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF