

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2011

Public Authority: Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision

1. The complainant wrote to Bradford Metropolitan District Council (the "council") and requested the following information:

Information relating to the council's adoption of Perseverance Street, Wainman Street and Angel Street

2. The Information Commissioner's (the "Commissioner") decision is that the council did not deal with the request for information in accordance with the FOIA in the following way:

- It wrongly applied section 40(2) of the FOIA to the information specified in the fourth element of the request.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- Disclose the withheld information to the complainant.

4. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. "Road adoption" refers to the process by which a highway authority takes ownership of a "private street". A "private street" is a road which is not maintained at public expense and a highway authority is under no

obligation to carry out repairs or cleansing to such a street, even though it could be a public right of way to which highway and traffic law can be applied.

6. Private roads will not normally be adopted unless they are brought up to current standards by the owners of the road.
7. In relation to the streets referred to in the request, the relevant highway authority is the council. The council's website confirms that road adoption will be facilitated if sufficient numbers of residents are in favour and indicate a willingness to fund apportional costs.¹
8. The complainant owns a property in one of the streets which was put forward for adoption by the council. At the time of submitting their agreement to the adoption process it was the complainant's understanding that payment of apportional costs could be deferred until after their property had been sold. However, the complainant was subsequently advised by the council that this was not the case.

Request and response

9. On 12 July 2011, the complainant wrote to the council and requested information in the following terms:

"This information relates to the adoption of Perseverance Street, Wainman Street and Angel Street in Baildon, where Bradford Council has adopted these 3 streets.

Firstly, we would like to request a copy of all the documents that Bradford Council sent out to the residents in the adoption process where Bradford Council has informed the residents of how the repayment for the works would be paid.

Secondly a copy of all the letters that we sent to [name redacted] (Highways and Traffic North Crossflats, Bingley) in reference to our letter confirming our initial telephone conversation with [name redacted] where we gave our consent for the adoption of Angel Street Baildon.

Thirdly, the minutes of all the residents meetings that Bradford Council held in relation to the adoption process of these 3 streets.

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http://www.bradford.gov.uk/bmdc/transport_and_infrastructure/roads_and_highways/road_adoption

Finally, a list of dates and number of residents that have been given, or were offered, the option to defer payment until their property sells. We do not request personal data such as names or addresses of these residents, simply the dates when they were offered deferred payment and how many residents were involved."

10. On 4 August 2011 the council responded to the request. In relation to the first 2 elements of the request, the council provided some information. In relation to the third element of the request, the council confirmed that it did not hold relevant information and it explained that the information specified in the fourth element of the request was being withheld under the personal data exemption (section 40 of the FOIA).
11. On 8 August 2011 the complainant wrote back to the council and asked it to reconsider its handling of the request. The complainant specifically asking the council to provide further information relating to the first element of the request and, in relation to the fourth element of the request, clarified that they were seeking anonymous numbers and dates, not personal data.
12. On 12 September 2011 the council provided the outcome of its internal review. The review upheld the initial handling of the request.

Scope of the case

13. On 14 September 2011 the complainant contacted the Commissioner to complain about the council's handling of their request. The complainant specifically asked the Commissioner to consider the following:
 - In relation to elements 1 and 3 of the request, whether the council has (respectively) provided all the relevant information and correctly confirmed that relevant information is not held.
 - In relation to element 4 of the request, whether the council has correctly withheld the requested information.
14. The Commissioner has confined his investigation to the issues raised by the complainant.

Reasons for decision

Section 1 - duty to provide requested information

15. Section 1(1) of the FOIA requires public authorities to confirm or deny whether information specified in a request is held and, where it is, to provide it to a requester.
16. In their complaint to the Commissioner, the complainant has alleged that the council has failed to identify all the information it holds which is covered by the request.
17. In relation to the first element of the request, the complainant considers that the information supplied by the council does not provide proper details of the repayment process. The complainant has made reference to previous correspondence from the council which explains that the repayment process is transparent and consistent. The complainant has argued that the lack of relevant information does not accord with the council's claims of transparency.
18. In relation to the third element of the request, the complainant has disputed the council's confirmation that no relevant information is held. In support of their assertion that minutes of meetings should be held, the complainant has (not unreasonably) stated that they would expect that a formal record of a decision-making process would be kept by the council.
19. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
20. To help determine the weighting of the balance of probabilities the Commissioner has approached the council with a range of questions which he routinely uses in such cases.

What searches were carried out for the information and why would these searches have been likely to retrieve any relevant information?

21. The council has explained that the officer responsible for the area of work searched paper copy files and electronic files on the server. The council confirmed that these would be the only locations where information of this type would be held.

Has the council deleted or destroyed any information relevant to the scope of the request?

22. The council confirmed to the Commissioner that no relevant information has been deleted or destroyed.

Is there a business purpose for which the requested information should be held? If so, what is the purpose?

23. The council explained that this is a scheme of work for which the properties on the street are billed on completion of the works on site. Consequently, any letter or other communication relating to payment methods, etc, would always be retained.

Are there any statutory requirements upon the council to retain the requested information?

24. The council confirmed to the Commissioner that there are no relevant statutory requirements.
25. The council also provided the Commissioner with confirmation that no further information relevant to both elements of the request was held.

Balance of probabilities

26. Whilst the Commissioner acknowledges that the complainant's expectation that the council should hold more relevant information is not unreasonable, the FOIA does not prescribe the types of information authorities should hold. Although the council has confirmed that there would be a business need to retain relevant information, this does not necessarily extend to information beyond that which has been provided to the complainant. The council has also confirmed that it is not required by other statute to retain information of the type specified in the request. In the absence of evidence to the contrary, the Commissioner accepts that this factor tips the balance of probabilities in favour of the council's position.
27. Having considered the council's explanations, the Commissioner is satisfied that, on the balance of probabilities, the council has provided all the information it holds which falls within the scope of the first element of the request and, in relation to the third element of the request, has correctly confirmed that it does not hold the information requested.
28. In its handling of these two elements of the request, the Commissioner finds that the council has complied with section 1(1) of the FOIA.

Section 40 – personal data

29. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.
30. Although it did not cite the specific subsection of the exemption which was being applied, the council confirmed that it was withholding the information because it considered that disclosure would result in the identification of individuals and would lead to a breach of the principles set out in the Data Protection Act 1998 (DPA).
31. In order to reach a view on the council's arguments in this case, the Commissioner has first considered whether the withheld information is personal data.

Is the requested information personal data?

32. The Commissioner's general view is that anonymised data is not personal data and thus there is no need to consider the application of any DPA principles when considering whether or not to disclose truly anonymised data.
33. The requester clearly specified that, in relation to their request for "...a list of dates and number of residents that have been given, or were offered, the option to defer payment until their property sells." They were not interested in being provided with the names or addresses of any individual falling within the scope of the request. The request was, therefore, for anonymous statistics or data.
34. Before deciding whether the information in this particular case is truly anonymised and can be disclosed without reference to the data protection principles, the Commissioner has considered the information which is available to the public. The test of whether the information is truly anonymised is whether on the balance of probabilities, a (or any) member of the public can identify individuals by cross-referencing the 'anonymised' data with information or knowledge already available to the public. Whether this 'cross-referencing' is possible is a question of fact based on the circumstances of the specific case.
35. The Commissioner has referred to a news story which appeared at the time the council adopted the roads in question². This confirms that the number of properties affected by the adoption is 38. Given this large

² Published 7 January 2010, available online here:
http://www.thetelegraphandargus.co.uk/news/4840029. We_ve_won_fight_to_get_roads_fixed_/

number and the non-visible nature of the putative deferred payments, the Commissioner does not see how this information could be combined with the anonymised statistics to identify individuals.

36. In view of this and, as the council has not provided any arguments which convince the Commissioner otherwise, the Commissioner considers that the withheld information comprises truly anonymised statistics and, on the balance of probabilities, its disclosure would not lead to individuals being identified.
37. The Commissioner has concluded that the withheld information does not constitute personal data and that the exemption set out in section 40 does not, therefore, apply.

Other matters

38. Although they do not form part of this decision notice, the Commissioner wishes to note that the following matters.
39. The Code of Practice issued under section 46 of the FOIA (the "section 46 code") provides recommendations about the practices which public authorities should follow in relation to the creation, keeping, management and destruction of their records³.
40. Paragraph 8.1 of the section 46 code advises authorities to ensure that they keep the records they will need for business, regulatory, legal and accountability purposes.
41. During the course of his investigation, it has occurred the Commissioner has concerns that the council's record keeping might not conform to the recommendations of the section 46 code. He directs the council to the section 46 code and expects that, in future, it will have regard for its recommendations.

³ <http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

Right of appeal

42. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

43. 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.
44. 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

Andrew White
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