

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2015

Public Authority: Hull City Council
Address: Guildhall
Alfred Gelder Street
Hull
HU1 2AA

Decision (including any steps ordered)

1. The complainant has made two requests to Hull City Council ("the council") for information about housing benefit guidance. The council refused both requests citing section 21 of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that section 21 has been correctly engaged for both requests.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 25 November 2014 the complainant wrote to the council and made request 1:

"I formally request a full copy of your Home Office/Government guide and conduct book/rules. [...] Please send me a copy or get in touch on [redacted telephone number], text is fine also, and I'll pick it up, if I have to pay for it so be it..."
5. The complainant reiterated this request on 7 December 2014:

"...could you send me the Housing Benefit Home Office / Government Guideline rule book I've asked for..."

6. The council responded to request 1 on 9 December 2014 and withheld the information under section 21. It maintained this position at internal review on 23 December 2014.
7. The complainant made request 2 by telephone on 31 December 2014, when he verbally requested an audio version of the withheld information. Although a verbal request is not valid under section 8(1) of the FOIA, the council voluntarily elected to turn this into a written request on behalf of the complainant.
8. The council responded to request 2 on 19 January 2015. It confirmed that it did not hold an audio version of the information.

Scope of the case

9. The complainant initially contacted the Commissioner on 15 January 2015 to complain about the council's response to request 1. Following the council's response to request 2, the Commissioner agreed to consider the council's response to both.
10. During the course of the Commissioner's investigation the council revised its position in respect of request 2, and confirmed that the information was held, but that it was applying the exemption provided by section 21.
11. The Commissioner considers the scope of this case is the determination of whether the council has correctly engaged section 21 in respect of both requests.

Reasons for decision

Section 21 – Information accessible to the applicant by other means

12. Section 21 provides an exemption for information that is already reasonably accessible to the applicant. It is an absolute exemption and as such no public interest test needs to be applied.
13. The council has confirmed to the Commissioner that the information caught by the request is guidance entitled 'Guide to Housing Benefit 2014-2017'. This information is held in hardcopy form at the city's Central Library, and is also a published book available to purchase.
14. The complainant has advised the Commissioner that the book held by the Central Library is not available for loan due to being a reference copy. He also considers that the information should be provided in a

format that does not discriminate against individuals who cannot spell, read, or otherwise speak English.

Whether section 21 applies to request 1

15. In his public guidance on the application of section 21¹, the Commissioner outlines that the specific wording of the section allows a public authority to consider the 'individual circumstances' of a requester when deciding on the applicability of exemption. Should a requester therefore have an alternative mechanism by which they can access information outside the terms of the FOIA, and that the information is 'reasonably accessible' through that mechanism, the exemption provided by section 21 will be engaged.
16. In the specific circumstances of this complaint, the Commissioner considers it necessary to determine what form the information was sought in. Having referred to the wording of request 1 and following correspondence with the council, the Commissioner considers that the information was sought in hardcopy form. This is supported by the complainant's arguments against the application of section 21, in which he specifies that the book is not available on loan (due to being part of the council's reference collection), and that he does not have a postal address to which the book can be delivered should he otherwise purchase it.
17. Having therefore identified that request 1 seeks the information in hardcopy form, it is evident to the Commissioner that the information in that form is available for inspection at the city's Central Library, and that it may also be purchased from the publisher.
18. As the Commissioner's guidance specifically details, information may be deemed as 'reasonably accessible' even when it is only available for inspection in a certain location. Having considered this, as well as the availability of the information for purchase as a book, the Commissioner must therefore conclude that the information (in hardcopy form) is reasonably accessible to the complainant, and that section 21 has been correctly engaged.

1

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf

Whether section 21 applies to request 2

19. The FOIA provides a requester with the right to specify the form they desire to have the information provided in. The section of the FOIA that provides this right is section 11.
20. In his public guidance on the rights contained within section 11², the Commissioner outlines that when information has been deemed as reasonably accessible to a requester under section 21, the public authority has no duty under section 11 to provide the information in another form.
21. Whilst the council has provided arguments for why providing the information in audio form would not be reasonably practicable, the Commissioner has already concluded that the information sought by request 1 has been correctly withheld under section 21. As such, the Commissioner must conclude that the same exemption applies to request 2.

2

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/means-of-communicating-information-foia-guidance.pdf

Right of appeal

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@hmcts.gsi.gov.uk

Website: 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

Andrew White
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