

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2021

Public Authority: Doncaster Children's Services Trust

Address: Colonnades House

Duke Street

Doncaster

DN1 1ER

Decision (including any steps ordered)

1. The complainant has requested information regarding the cost of a claim against the public authority.
2. The Commissioner's decision is that, on the balance of probabilities, Doncaster Children's Services Trust is not withholding any information within the scope of the request.
3. The Commissioner does not require any steps.

Request and response

4. On 18 January 2020 the complainant wrote to both Doncaster Council ('the council') and Doncaster Children's Services Trust (DCST) and requested information. The request relates to information regarding the cost of dealing with the complainant's claim against DCST. Numbering added by the ICO [1] and [2]:

"I make an additional Freedom of Information Act request to Doncaster Council for

[1] the full financial cost of dealing with this claim including the complaint etc. and for

[2] copies of documentation such as articles of association and incorporation related to the separation of DCTS from the Council."

5. On 27 February the council responded. In terms of each request:

[1] stated that *"DCST do not hold the information surrounding the cost of the claim or financial costs for data protection complaints or financial costs for corporate complaints."* The council confirmed that the response was from DCST, and not the council who were just providing administrative support.

[2] refused on the basis of section 21 – information accessible to the applicant by other means.

The complainant subsequently confirmed to the Commissioner that the scope of the complaint is in relation to [1] only as information relating to [2] had been obtained.

6. The complainant requested an internal review on 28 February 2020.

7. Following an intervention from the Information Commissioner, DCST provided the outcome of an internal review on 11 May 2020, it upheld the original position.

Scope of the case

8. The complainant contacted the Commissioner initially on 28 February 2020 to complain about the way their request for information had been handled. Specifically, that the requested information had not been provided. Following the internal review of 11 May 2020, the complainant's position was unchanged.

9. During the course of the investigation, the council advised that the request had been made to both the council and DCST. It advised that although the council provide administrative support for FOIA matters, DCST is a public authority for the purposes of the FOIA and therefore responds directly to requests. The response to [1] came from DCST.
10. In light of this, the Commissioner carried out her investigation with DCST. The complainant was advised and agreed with the Commissioners approach.
11. The Commissioner considers the scope of the case, in light of the investigation, is whether, on the balance of probabilities, DCST holds any information in scope of the information request [1].

Reasons for decision

Section 1 general right of access

12. Section 1 of the FOIA states that:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.”*

13. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
15. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant’s evidence and arguments. She will also consider the searches carried out by the council and other information or explanation offered by the council which is relevant to her determination.

The complainants view

16. The complainant states that if DCST do not directly hold the data responsible then they would be able to access it at a cost which is proportionate to the request.
17. The complainant states that the data requested is for the cost of dealing with a claim in which DCST are the second defendants. The complainant contends that it is inconceivable that they would not have costed the defence of the claim nor been aware of the costs.
18. The complainant states that DCST outsources its legal services and therefore this should make it easier to obtain the financial costs of the defence of the claim in full.
19. The complainant considers that DCST are withholding the information because it is financially embarrassing. That being because the costs of defence were higher than a figure offered in settlement to avoid legal action.

DCST's Response

20. DCST confirmed that it does not hold the building blocks to compile a response to the request. It stated: "*The Trust does not record information relating to the cost of officers dealing with complaints or legal claims.*"
21. The Commissioner asked whether the information was held by another body on behalf of DCST. It advised that DCST is insured against legal claims. Therefore, the legal claim relating to this request was passed to the insurers who instructed a solicitor to act on DCST's behalf. The cost of the legal claim was met by the insurers and the settlement of accounts was dealt with directly between the solicitor and the insurer.
22. The Commissioner asked what searches had been carried out to check for any information in scope of the request. DCST responded that there was no need to search for the information as it simply does not record this type of information.
23. In answer to the Commissioners further questions on the matter, DCST confirmed that it had never held the information in scope of the request and therefore it had not destroyed anything that was relevant.
24. DCST advised that there is no statutory or business reason for it to hold the requested information.

Conclusion

25. The complainant contends that if the information is not held then DCST should be able to obtain it at a proportionate cost. Under section 1, a

public authority is only obliged to provide a requester with the recorded information it holds at the time a request is received. This means that DCST has no obligation under the FOIA to create, or otherwise pay to obtain, information in order to satisfy a request.

26. The Commissioner considers that the complainant has provided a well-reasoned argument in relation to why they consider DCST would hold the requested information.
27. However, the Commissioner finds that DCST has provided a rational response regarding why it does not hold the information about the cost of a claim. DCST advised that it insures against legal claims and the insurer instructs solicitors independently in this regard. As DCST state they have no need for the cost information, the Commissioner is satisfied that neither the insurer nor the instructed solicitor is holding the information on behalf of DCST.
28. DCST confirmed that it hasn't destroyed any information in scope of the request, and that there aren't any statutory or business reasons for holding it. The Commissioner therefore considers that she has no grounds upon which to dispute DCST's stated position as she has found no tangible evidence to the contrary.
29. Having considered the evidence and arguments presented, the Commissioner is satisfied that, on the balance of probabilities, DCST does not hold any information within the scope of the request.
30. The Commissioner therefore considers that DCST complied with its obligations under section 1(1) of the FOIA.

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: 0300 1234504

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.

Signed

Andrew White
Head of FOI Casework and Appeals
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF