

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 January 2024

Public Authority: Barnsley Metropolitan Borough Council

Address: Town Hall
Barnsley
S70 1AQ

Decision (including any steps ordered)

1. The complainant made a request for information about software licences. Barnsley Metropolitan Borough Council ("the Council") issued a response in which it does not clearly state its position under FOIA for each of the three parts.
2. The Commissioner's decision is that the Council has not complied with section 1(1) of FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - For each of the three parts of the request, issue a new response which either confirms or denies whether the requested information is held or cites a relevant provision which removes this duty. In doing so the Council should note the observations contained in this decision notice.
4. The Council 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 March 2023, the complainant wrote to the Council and requested information in the following terms:
 - “1. Can you confirm the date Barnsley Metropolitan Borough Council migrated to Microsoft Office M365/O365?
 2. Can you confirm what versions and quantities of licences that were used immediately prior to migration to licence your desktops, and, were these licences ‘owned’ by the council (Perpetual) or (On-Premise paid for monthly so not owned).
 3. Did the council use the 'FromSA' product SKU when it initially migrated to M365/O365 to obtain discounts
 4. Unless you already have your latest MLS, could you reach out to your IT reseller and obtain it. Your reseller will have access to this. They are legally obliged to provide you with this as you would require this for basic audit requirements. If you could forward a copy of the complete MLS I can review it and see what Microsoft licences have been used over the years by the council. There is nothing on an MLS that could cause any harm to any organisation. We have reviewed many MLS’s from many councils over the years and continue to receive them on a daily basis. If this is something the council are unable to supply to me I would find this unusual”
6. The Council responded on 14 June 2023. It stated that all of the requested information was withheld under section 31(1)(a).
7. Following an internal review, the Council wrote to the complainant on 13 July 2023. It maintained the application of section 31(1)(a).

Scope of the case

8. The complainant contacted the Commissioner on 17 July 2023 to complain about the way their request for information had been handled.
9. The complainant informed the Commissioner that the basis of their complaint was that the Council had failed to comply with section 1 of FOIA by not clearly informing them whether the information was held, and further, that the application of section 31(1)(a) was incorrect.
10. The Commissioner has reviewed the request and does not consider that part 4 represents a valid request for information under section 8 of the FOIA. This is because it does not clearly seek information that is held by

the Council. The Commissioner has therefore not considered it in this decision notice but directs the complainant to his guidance in 'Other matters'.

11. The Commissioner considers the scope of this case to be whether the Council has complied with section 1 of FOIA in respect of parts 1-3 of the request. For the reasons given in this decision, the Commissioner has not proceeded to consider section 31(1)(a).

Reasons for decision

Section 1 – General right of access to information held by public authorities

12. Section 1(1)(a) of FOIA requires a public authority to inform a requestor whether it holds information of the description specified in the request.
13. However, this is subject to the provision of section 2(1)(a) of FOIA, which removes the section 1(1)(a) duty when a public authority is seeking to neither confirm nor deny that information is held under any of the exemptions with that provision.

The Commissioner's conclusion

14. The Commissioner has considered the content of the Council's response and internal review outcome, in addition to the submissions that he has received from the Council – following the Council being invited to provide submissions on the application of section 31(1)(a).
15. Ordinarily, where a public authority has applied an exemption, the Commissioner may consider this to be an implicit confirmation that the information is held. However, in the circumstances of this case, the Commissioner considers that the Council's handling of this matter, and its submissions to the Commissioner, means that its position under section 1 is not clear.
16. This is because the request is composed of three parts, each of which seeks different information, but the Council has not differentiated between these in its response and internal review outcome.
17. Furthermore, in the Council's submissions to the Commissioner (on section 31(1)(a)), the Council's explanation suggests that the act of confirming that information is held would cause the claimed prejudice. However, the Council has at no point stated that it wishes to rely upon section 31(3), which allows a public authority to neither confirm nor deny that the requested information is held, for any of the three parts.

18. For the above reasons the Commissioner's view is that the Council's response falls to satisfy the duty provided by section 1(1).
19. The Council should issue a response in which it addresses each of the three parts of the request. For each part it should clearly confirm the information is held, deny the information is held, or state the relevant 'neither confirm nor deny' exemption in a refusal notice. For any part that the Council wishes to confirm the information is held but withhold it under an exemption this should be clearly stated in a refusal notice.
20. Section 10(1) requires authorities to comply with the duty in section 1(1) within 20 working days of the date of receipt of a request.
21. In this case, the Council did not do so, so the Commissioner has recorded a breach of section 10(1).

Other matters

22. The Commissioner notes, for the benefit of the complaint, that the FOIA only provides a right of access to recorded information held by the public authority. Any request should clearly define the information that it seeks, otherwise it will not be a valid request for the purposes of section 8 of FOiA. The Commissioner has published guidance for requestors on how to write an effective request for information under FOIA. This guidance can be read at:

<https://ico.org.uk/for-the-public/official-information/how-to-write-an-effective-request-for-information/>

Right of appeal

23. 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

24. 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.
25. 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

Daniel Perry
Senior Case Officer
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