

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2024

Public Authority: Milton Keynes Council
Address: 1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant requested information held by Milton Keynes Council (the council) about a particular bus route.
2. The council provided the complainant with some information, but advised that it considered other information relevant to the request to be exempt from disclosure under section 43(2) of FOIA.
3. Following the Commissioner's intervention, the council provided the complainant with some additional information. The council also revised its position, now stating that it did not hold some of the information previously considered to be relevant to the request. This included the information which the council had claimed to be subject to the exemption at section 43(2) of FOIA.
4. It is the Commissioner's decision that, on the balance of probabilities, the council does not hold any information relevant to the request in addition to that which has already been provided to the complainant.
5. The Commissioner does not require the council to take any steps.

Request and response

6. On 20 November 2023, the complainant wrote to the council and requested information in the following terms:

"I have been in correspondence with Cllr [councillor name redacted] regarding Arriva bus services in Milton Keynes. You will note from the first email in this series that she has indicated that she is in possession of data which I could extrapolate the reliability of the 150 bus service to and from Milton Keynes. I would like a copy of this data but Cllr [councillor name redacted] has declined to provide me with the same relying on the S:43(2) Commercial interests exemption.

Please treat this email as my FOI application for sight of this data. If you choose to apply the commercial exemption, please provide me with a fully reasoned argument as to why you declined to provide me with this data."

7. On 5 December 2023, the council responded to the complainant, confirming that the Department for Transport (DFT) offers bus data (including timetable and route information) through its Bus Open Data Service (BODS). The council said it was providing statistical information taken from the BODS system which related to the bus 150 route for the period covering October 2023. The council also advised the complainant that information for the full month of November 2023, was not yet available.
8. The council then went on to say that the 'full level of information requested is exempt from disclosure under section 43(2) of FOIA.' It said that the withheld information is commercially sensitive as the buses operate on a commercial basis. The council also confirmed that it considered the public interest to favour withholding the information in this case.
9. On the same date, the complainant requested an internal review. They said that the purpose of their request was to ascertain how punctual the 150 bus route is, and they did not require passenger numbers or other similar material as indicated by the council's response to the request. The complainant said that they simply wanted to know how the councillor was able to determine how punctual the 150 bus was.
10. On 7 December 2023, the council provided its internal review response, upholding its original position.
11. With regard to the application of section 43(2), the council said it had not provided the September 2023, data for the 150 bus service in its response to the request as it considered more than one month of data to

be commercially sensitive. The council said that the release of any additional months of data would provide a pattern of punctuality data for a specific route which could be used by other bus companies. The council said that this would then create unfair competition between bus operators.

12. The council also confirmed to the complainant that data on overall punctuality of bus routes in Milton Keynes is published on its website, and it provided a link to this information.
13. During the Commissioner's investigation, in an attempt to resolve the matter informally, the council provided the complainant with the punctuality figures for the 150 bus route for September 2023, which it said it had obtained from the BODS system.
14. The council also advised the complainant that its previous responses to the request may have led to a misunderstanding about information that it held. The council explained that the statistical information that it had provided to the complainant had been obtained from the BODS system. It said that as the BODS system is operated by the DFT, the information is not held by, or on behalf of, the council. The council confirmed to the complainant that it therefore does not hold the requested information, and went on to say that it should have made this clearer in its previous responses to the request.
15. The council said that a misunderstanding may also have arisen in respect of information provided by its transport team to the councillor about the 150 bus route. The council said that the councillor was not provided with specific data on reliability, but rather was given a summary of the performance of the 150 bus service over a two week period.
16. The complainant remained dissatisfied with the additional response that they had received from the council, saying that it still did not answer their request. The complainant argued that the councillor had originally said that they were in possession of information which confirmed that there was no issue with the reliability of the bus service. The complainant also said that both the councillor, and subsequently the council, had advised that information was not being disclosed to them as it was commercially sensitive. The complainant stated that they still required this information.
17. Following further discussion with the ICO, the council released a copy of certain emails to the complainant, which included communications between the councillor and the transport team about the concerns raised by the complainant about the punctuality of the 150 bus service.

18. The complainant responded to advise that the council had only provided a small part of the email exchange between themselves and the councillor. They asked for the full disclosure of emails, stating that they still required that information which the councillor originally refused to disclose on the basis that it was subject to section 43(2) of FOIA.
19. The council responded to advise that the only information that had been withheld was the complainant's own personal data contained within their email. The council also confirmed that the email from the transport team to the councillor was the information that had been requested by the complainant, and that no additional information was held.

Scope of the case

20. The Commissioner will decide whether, on the balance of probabilities, the council holds any additional information that is relevant to the complainant's request, and if so, whether it is entitled to rely on section 43(2) of FOIA as its basis for withholding such information.

Reasons for decision

Section 1 – information held/not held

21. Section 1 of FOIA states that a person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them, if it is not exempt information.
22. It is the Commissioner's understanding that bus operators, their agents and similar, provide the information about the bus services (such as timetables, routes, tracking data) that is held on the BODS system. From what the council has said, it does not hold this data on its own systems, but is able to access it whenever required using the DFT's BODS system. Whilst the public are also able to view information held on the BODS system, it would appear that public access is limited to certain sets of data.
23. The council said that it had originally decided to apply section 43(2) to the statistical data held on the BODS system for September 2023, as it was concerned that providing information over a longer period of time might provide competitors to the current operator of the 150 bus service with an unfair advantage.

24. However, upon receipt of the Commissioner's investigation and a further review of its handling of the request, the council has said that it should never have considered section 43(2), and should have explained to the complainant that whilst it has access to information via the BODS system, it does not hold such information.
25. The Commissioner is satisfied from the information available that data held on the BODS system is not information held by, or on behalf of, the council for the purposes of FOIA.
26. However, if the council has recorded any of the information it accessed through the BODS system (when dealing with the complainant's initial enquiries and concerns about the 150 bus route), then the Commissioner considers such information would be held by the council.
27. The emails recently provided to the complainant by the council confirm that the councillor contacted the transport team on 12 November 2023, about an email they received from complainant on the same date about the reliability of the 150 bus service. The complainant was also provided with the transport's teams response to the councillor of 14 November 2023, which set out the following information:

'I've checked in with the guys who've looked at the tracking. The 150 is generally pretty trouble free and over all in the last couple of weeks it's run pretty much to time. That said there was obviously an issue on Friday as hardly any of the buses ran to time, most being over 10minutes overdue. It sounds as though an issue knocked them off track and they just didn't recover, which can happen occasionally, perhaps a breakdown or something. We can follow up to Arriva if you'd like for an explanation, but I'd say this is a one off rather than a pattern on the 150.'
28. The councillor's subsequent response to the complainant then said the following:

'We have had a look at the data we have and haven't been able to identify the issue from that. We saw issues on Friday- which we've highlighted to the operator.....'
29. The council's transport team are clear in their email to the councillor that they have "looked at the data". There is no evidence that the transport team made a separate record any of the information that they accessed on the BODS system at the time that the complaint's initial enquiries were dealt with by the councillor. There is also no substantive evidence to support any claim that the councillor was provided with any information in addition to that set out in the transport team's email of 14 November 2023.

30. Whilst the transport team decided to access the BODS system again in order to provide the complainant with the same data that they had originally “looked at”, the Commissioner considers that they were under no obligation to do so in response to the FOIA request.
31. Whilst the complainant appears to believe that the councillor had access to data that has not been released to them by the council in response to their request, having considered the information available, it is the Commissioner’s opinion that it is more probable than not that the councillor’s response to the complainant was based solely on the advice that they received from the transport team on 14 November 2024.
32. The complainant’s concerns appear to be based on a misunderstanding about what information is held. This is primarily due to the council’s incorrect citing of section 43(2) of FOIA in relation to information it had access to via the BODS system, but which it considered would not be appropriate to release into the public domain.
33. Whilst the complainant has said that the data held on the BODS system is not what they require, the Commissioner is satisfied that it is the information held on this system that enabled the council to respond to the complainant’s concerns and queries about the reliability of the 150 bus service.
34. In the Commissioner’s view, there is no substantive evidence to indicate that the council holds any further recorded information in connection to the concerns raised by the complainant about the 150 bus service, or that the councillor holds any additional statistical information or similar, which assisted them when providing their responses to the complainant’s enquiries.
35. Having considered all of the available information, the Commissioner therefore finds that, on the balance of probabilities, the council does not hold any further information falling within the scope of the complainant’s request.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senor Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF