

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2016

Public Authority: Rhondda Cynon Taff County Borough Council

Address: The Pavillions
Cambrian Industrial Park
Clydach Vale
Tonypany
CF40 2XX

Decision (including any steps ordered)

1. The complainant has requested various items of information in respect of each of the options regarding Rhondda Cynon Taff County Borough Council's (then) current consultation paper on nursery provision. The Council provided some information but following the complainant's request for an internal review, refused to supply more detailed information by virtue of section 12 of the FOIA on the basis that the costs of compliance would exceed the appropriate limit. However, following the Commissioner's investigation of the complaint, the Council confirmed that it did not actually hold the more detailed information at the time of the request.
2. The Commissioner's decision is that Rhondda Cynon Taff County Borough Council did not hold the information at the time of this request, and has therefore complied with its obligations under section 1(1) of the FOIA. However, in failing to provide its substantive response within the required 20 working days, the Council has breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 8 January 2015, the complainant wrote to Rhondda Cynon Taff County Borough Council ('the Council') and requested the following information:

"1) Details of how the potential savings have been calculated in each of the options presented in the current consultation paper on nursery provision, including full calculations and details of any assumptions made.

2) Details of the costs incurred so far of the consultation process regarding cuts to services in RCT. Please include figures for both the initial and current consultation and provide a full breakdown of how the costs have been calculated."

5. The Council responded on 11 March 2015, providing information in respect of both items 1 and 2 of the complainant's request.
6. The complainant was not satisfied with this response and contacted the Council on the same date stating that:

"In terms of the costs of the various options you have not provided the details requested or assumptions used.

In terms of the costs of consultations you have inexplicably provided only details of external costs rather than all costs as requested."

7. The Council responded on 18 March 2015 providing a further explanation and requested that if the complainant remained dissatisfied with the response, that he should be more specific and set out as clearly as possible the information he required.
8. The complainant considered that his original request was sufficiently clear but clarified that his request should include:

"Full calculations as to how each of the figures stated in the discussion document have been arrived at and details of assumptions used i.e. the workings behind your figures i.e the estimated number of pupils and the estimated saving in each cost centre and how this has been arrived at. I also note that your very brief summary ...does not include the costs of any staff redundancies or any provision for the reduced council tax revenue as a number of households in the borough have reduced household incomes and qualify for benefits.

- *In terms of costs incurred by the Council, this is a very clear request which you appear to be ignoring. For the avoidance of doubt it should include but not be limited to the following:*
- *Internal staff costs devoted to the review*
- *External staff costs devoted to the review*
- *Legal costs including court costs of both the original failed consultation, implementation and judicial review.*
- *Legal costs pertaining the current consultation in terms of both internal staff costs and legal fees*
- *Print costs for all the documentation produced in respect of this matter*
- *All other costs."*

9. The Council responded on 24 April 2015 providing further information in respect of his request. It also informed the complainant that it had already provided him with information up to the appropriate limit for responding to FOIA requests and that to provide a further breakdown in the detail he was requesting would require additional work and exceed the 18 hour appropriate limit. The Council also confirmed that it did not hold information in respect of:

- Internal staff costs relating to the service change process.
- External agency/consultancy/staff costs
- The current Judicial Review
- Print costs

10. The complainant was dissatisfied with the Council's reliance on section 12 of the FOIA and requested a formal appeal against this aspect of the Council's response.

11. Following a number of reminders from the complainant that a response was outstanding, the Council provided details of its internal review on 10 July 2015, upholding its previous decision to refuse part of the request on the basis of section 12 of the FOIA, with a more detailed explanation in support of its reasons for this.

Scope of the case

12. The complainant contacted the Commissioner on 14 July 2015 to complain about the way his request for information had been handled. In particular, he did not accept the Council's argument that it had not retained detailed workings to show how it had arrived at figures in a consultation document.

13. Following receipt of the complaint, the Commissioner contacted the Council for further information to assist with his investigation. The Council's response indicated that it no longer holds the detailed

information subject to the request. The focus of the Commissioner's investigation therefore is to determine whether the Council has complied with its obligations under section 1(1) of the FOIA.

Reasons for decision

Section 1 – General right of access to information held

14. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
15. Where there is a dispute regarding whether relevant information or additional information is held, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
16. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner does not expect the public authority to undertake a complete search of all of its records, however he does expect the public authority to conduct a reasonable and proportionate search in all cases.
17. In this particular case, the complainant does not accept that the detailed workings behind the figures in the consultation document were no longer held at the time of his request. The Commissioner therefore asked the Council to provide an explanation as to how it reached this conclusion.
18. The Council confirmed that only the figures from the detailed workings were noted and retained at the time of the consultation and the detailed workings themselves were not saved. It explained that there were many detailed processes behind the figures quoted in the consultation document. It further explained that school budgets are based on a formula which takes into account many variables that affect funding, with pupil numbers representing the biggest factor. The starting point to estimate the savings was therefore a very large pupil database.
19. The Council explained that each school has its own cost centre and at the time of calculating the options, there were 111 schools/cost centres.

Each of these varies in size based on pupil numbers and it is the pupil database which drives the majority of the funding. The database was interrogated for each option to determine the pupil full time equivalent for each school. Pivot tables were then run on each of the options, and the results noted. However, the options themselves were not saved.

20. The Council further explained that the results for each option were then processed into its school formula funding spreadsheet to assess the financial impact on each school and the authority as a whole. Again, these are not saved individually, but the output of the previous exercise is input into this process with the resulting savings being noted, while the detailed calculations that result from the scenario analysis are not.
21. The Commissioner has considered the explanation provided by the Council, and whilst he considers it might have been prudent to retain the detailed workings behind the figures, (especially in view of the contentious proposals contained within the consultation document), he accepts that based on the balance of probabilities the Council did not retain the information, and has therefore complied with its obligations under section 1 (1) of the FOIA in relation to this information.

Section 10 – time for compliance

22. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
23. The Commissioner notes that the complainant submitted his original request on 8 January 2015, however the Council did not send its substantive response to the complaint until 11 March 2015. In failing to comply with the required timescale, the Council breached section 10(1) of the FOIA.

Other matters

Internal review

24. The Commissioner acknowledges that it is not a formal requirement for a public authority to conduct an internal review under the FOIA. However, the Section 45 Code of Practice recommends that public authorities do undertake an internal review and that it should be done promptly. The Commissioner has also produced guidance in relation to this matter which recommends that it takes no longer than 20 working days in most cases, and in exceptional circumstances, no longer than 40 working days.

25. The Commissioner notes that the complainant requested an internal review on 25 April 2015. However, despite a number of reminders from the complainant, the Council did not send the complainant details of its internal review until 10 July 2014.
26. The Commissioner expects the Council to deal with requests for an internal review within the recommended timescales in future.

Right of appeal

27. 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

28. 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.
29. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
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