

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2012

Public Authority: Bristol City Council
Address: The Council House
College Green
Bristol
Avon
BS1 5TR

Decision (including any steps ordered)

1. The complainant requested information about the councils stated policy of random identity checks for those making freedom of information requests to it. In response the council pointed to the notification on its website and stated that that was all of the information it held on this policy. After a request for review the council again stood by its position that that was the only information held.
2. The Commissioner's decision is that Bristol City Council has responded to the complainant's request by providing him with a link to the information. He has also decided that on a balance of probabilities no further information is held by the council falling within the scope of the request.

Request and response

3. On 26 October 2011 the complainant wrote to the council and requested information in the following terms:

"This is a request for information in terms of the Freedom of Information Act 2000. I seek information from Bristol City Council in relation to their policy on checking the identity of applicants making requests for information.

In response to a request for information from an applicant, Bristol City Council advised that it had "now implemented a system to

randomly seek proof of identity".

I request that Bristol City Council release under the provisions of the Freedom of Information Act 2000 the following information:

(a) the content of all documents outlining the council's policy on checking the identity of an applicant making an FOI request;

(b) the content of all internal correspondence on the framing of these policies and;

(c) the content of any correspondence between the Council and the Information Commissioner's Office relating to the framing of these policies."

4. The council responded on the same date. It provided the complainant with a link to its website which stated the council policy in question.
5. Following an internal review the council wrote to the complainant on 12 January 2012. It stated that its initial response was correct. However it recognised that it could have been clearer by emphasising to the complainant that this was all of the information which the council holds on this issue.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that the council must hold further information falling within the scope of his request. He also argued that the council took too long to respond to the review.

Reasons for decision

7. Section 1(1) 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 them.

8. Therefore, if a public authority does not hold information falling within the scope of the request it will discharge its duties under the Act if it informs the applicant in writing that it does not hold the information.
9. Where a public authority does hold the information, and is not relying on an exemption to withhold it, it will also discharge its duties under the Act if it provides the applicant with the information.
10. In this case the council provided the complainant with a link to its website. On review it stated that it should have been clearer and clarified to the complainant that this was the only information which it holds in respect of the request.
11. The complainant believes that the council must hold further information. For instance, he believes that the council will hold criteria establishing under what circumstances the council will ask for proof of identity.
12. The Commissioner asked the council why it was sure that no further information is held. The council explained that it had asked the officers who introduced the policy whether any records were taken of the decision to implement it, and whether any information was held about its introduction. The officers clarified that no records were taken of their discussion.
13. The council explained that it considered that the lack of a web notification would make it difficult to require requestors to provide identification if it received requests where a pseudonym seemed to have been used. As a result a decision had been taken to introduce a notification on the council website to inform those who were considering using a pseudonym that proof of their identity may at times be required. The notification was therefore introduced referring to the policy and stating that the council will follow the guidance published by the Commissioner on the use of pseudonyms. It further explained that it had no specific criteria laid down identifying where requests for further identification would be used other than that provided in the Commissioner's guidance.
14. The Commissioner guidance on the use of pseudonym's is available at http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/NAM_E_OF_APPLICANT_FOP083_V1.ashx. In effect, in the vast majority of cases the Commissioner would expect an authority to simply respond to a request; however authorities are able to request further proof of identity where the pseudonym is obvious or, for instance where the content of a request suggests that a pseudonym is being used to avoid a finding that the request is vexatious.

15. The Commissioner recognises that in the normal course of events an authority will make a record of discussions which it has had surrounding the implementation of particular policy. In this case however the council has confirmed that no further information is held.
16. The Commissioner must make a decision whether information is held based on a balance of probabilities. In this case he is satisfied that on a balance of probabilities no further information is held which can respond to the request.
17. The Commissioner's decision is therefore that the council complied with its obligations under section 1(1)(a) and 1(1)(b) of the Act by directing the complainant to the information held on its website. as this contained all of the information which the council holds falling within the scope of the complainant's request.

Other matters

The time taken to review the complaint

18. The complainant stated in his complaint that he was unhappy with the period of time taken by the council to respond to his request for review. He stated that this was in excess of 30 days. He wrote to the council asking for a review on 23 November 2011 and received the council's response on 12 January 2012.
19. Although there is no statutory time set out in the Act within which public authorities must complete a review, the Commissioner has issued guidance on this matter (Good Practice Guidance 5). The Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days.
20. The Commissioner monitors significant or repeated unreasonable delays in responding by authorities, and where appropriate further action may be taken.
21. The Commissioner notes the delay in the council's internal review response in this case. The time for response was 33 working days, discounting normal bank holidays over the Christmas and New Year period. Whilst noting that the response falls outside of the 20 working days, in this instance his decision is that no additional action should be taken based on this complaint.

The council's policy of randomly checking the identification of requestors

22. The Commissioner's position is that it would be contrary to the spirit of the Act to routinely or randomly check a requester's identity.
23. Where the requestor has used a name other than an obvious pseudonym, the Commissioner will assume that the applicant has provided his/her real name and expects public authorities to do likewise. If however a public authority suspects the name given is false and refuses to deal with the request on that basis, it will then be up to the public authority to provide evidence to show that they have good reason to believe that the name used is a pseudonym and that therefore the request is invalid.
24. Where the applicant has used what seems to be an obvious pseudonym, the onus is on the applicant to prove that they are in fact known by that name and thus that they have made a valid request.
25. Finally, the Commissioner acknowledges that what constitutes an individual's real name is not always clear cut, ie it is not limited to the name that appears on someone's birth or marriage certificate and it can include a name by which an individual is widely known. Both public authorities and the Commissioner should use a reasonably informal standard of confirming a requestor's identity where this is in issue.
26. The council's notification on its website does not state that it will randomly check the identity of requestors. It refers to the Commissioner's guidance and states that it will follow this. It did however state that random checks will be made in response to a previous freedom of information request, and the complainant has stated that it confirmed this to him in a telephone call. The Commissioner considers that such a policy would be contrary to the spirit of the Act.
27. The council however confirmed to the Commissioner that in fact checks are not made on a completely random basis and that its actual policy follows the Commissioner's guidance as stated on its website notification.
28. The Commissioner therefore considers that the terminology used in the council's response to the previous request was unfortunate but that there is no evidence to suggest that its policy is not in line with the Commissioner's guidance.

Right of appeal

29. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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

**Gerrard Tracey
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Wycliffe House
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