

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2017

Public Authority: Northamptonshire County Council
Address: One Angel Square
Angel Street
Northampton
NN1 1ED

Decision (including any steps ordered)

1. The complainant has requested information relating to a contract for day care provision. Northamptonshire County Council initially stated that the information was not held but subsequently disclosed the information during the Commissioner's investigation.
2. The Commissioner's decision is that Northamptonshire County Council failed to disclose the requested information within the statutory time limit and 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 6 January 2017, the complainant wrote to Northamptonshire County Council (the "council") and requested information in the following terms:

"During the consultation process in respect of ceasing the block contract with Olympus Care (in respect of day care provision at the Drayton Centre and Stephenson Court) it was stated that savings would be made of approximately £400,000 per annum. Could you please provide a detailed breakdown of how these savings are made up?"
5. The council responded on 30 January 2017 and advised the complainant to redirect their request to Olympus Care Services.
6. Following an internal review the council wrote to the complainant on 20 February 2017. It stated that it did not hold the requested information and again directed the complainant to resubmit their request to Olympus Care Services.

Scope of the case

7. On 4 March 2017 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the Commissioner's investigation the council disclosed the information to the complainant. The Commissioner agreed with the complainant that she would issue a decision notice to record the delayed disclosure.

Reasons for decision

Section 10(1) – time for compliance

9. Section 10 of the FOIA requires a public authority to respond to a request for information in accordance with section 1(1) of the FOIA within 20 working days following the receipt of the request.
10. In this case the request was submitted on 6 January 2017 and the council initially stated that the information was not held. It advised the complainant that the information was held by a third party (Olympus Care Services) which was providing a care service under contract to the council.

11. During the Commissioner's investigation the council revised its position and disclosed the information to the complainant.
12. As the requested information was disclosed on 15 September 2017 the Commissioner finds that the council breached section 10(1) of the FOIA. As the council has now complied with section 1(1) she does not require it to take any further action in this regard.

Other matters

13. Although they do not form part of this notice the Commissioner would like to note the following matters of concern.

Information held on behalf of public authorities

14. Section 3(2) of the FOIA provides that information is held by a public authority if-

"(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

15. In this case there was some confusion around whether the council held the requested information and whether it was held by a contractor (Olympus Care Services) on the council's behalf.
16. The Commissioner recognises that, at a time of increasing outsourcing by public authorities, it may not always be clear whether third parties hold information on behalf of the authorities to which they provide services under contract. However, such partnerships often involve the provision of core services at public expense so there is a risk that a lack of clarity can result in delayed provision of information and shortfalls in accountability and transparency.
17. The Commissioner's concerns about this issue extend beyond the specific circumstances of this complaint and recently resulted in a resolution at the International Conference of Information Commissioners which called for:
- "...initiatives and programmes to improve access to information legislation in relation to contracted out services and service delivered by non-public organisations."*¹
18. The Commissioner encourages the council and other authorities to be mindful of these issues in the handling of requests and to ensure that outsourcing does not lead to shortfalls in accountability and transparency.

¹ <https://icic2017open.files.wordpress.com/2017/09/icic-2017-resolution.pdf>

Internal Reviews

19. The code of practice issued under section 45 of the FOIA (the "code") directs that public authorities should have a procedure in place for dealing with complaints about the handling of requests for information².

20. Paragraph 39 of the code recommends that such complaints procedures – "internal reviews", should:

"...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

21. One of the benefits of internal reviews is that a complainant's concerns can be resolved promptly thus averting the need for a complaint to the Commissioner and for further delays to be incurred.

22. The Commissioner advises that, in future practice, the council and other authorities have regard for the benefits of thorough internal reviews and that they ensure the recommendations of the code are observed.

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<http://webarchive.nationalarchives.gov.uk/20150603210930/http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.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

Andrew White
Group Manager
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Cheshire
SK9 5AF