

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2018

Public Authority: Medway Council

Address: Gun Wharf
Dock Road
Chatham
ME4 4TR

Decision (including any steps ordered)

1. The complainant has requested information about the number of children leaving schools to be educated at home for the academic years of 2015-2016 and 2016-2017. Medway Council ("the Council") has disclosed conflicting responses to part of the request, and has not responded to the remainder. The Council has acknowledged that it has not provided a substantive response under the terms of the FOIA.
2. The Commissioner's decision is that the Council has failed to provide a substantive response, and has therefore breached section 10(1) of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Issue a response, under the FOIA, to the request (which the Council has given the reference 'MFOI001174').
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 25 April 2017, the complainant wrote to the Council and requested information in the following terms:

I am requesting the following data for the academic year 2015-16, and for 2016-2017 to date.

For each Medway school separately with 4 or more pupils leaving to become Educated at Home, I request the number of pupils leaving in the period, and the school Year Group from which they left.

6. The Council responded on 26 June 2017. It disclosed information. This information was:

- The total number of children withdrawn from primary and secondary education in 2015-2016 (377), and the breakdown of this figure by school.
- The total number of children withdrawn from primary and secondary education in 2016-2017 (180), and the breakdown of this figure by school.

7. The complainant subsequently asked the Council to undertake an internal review. This was on the basis that no 'breakdown' (by year group for each school) had been provided.

8. The Council provided an internal review on 21 November 2017. It appears to change the total number for 2015-2016 (to 231), and the total number for 2016-2017 (to 173). It did not provide a breakdown by year group for each school.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled, and specifically that the request had not been fully addressed.
10. During the course of the Commissioner's investigation, the Council offered to meet with the complainant to identify whether his concerns could be resolved informally. The outcome of this meeting was that the Council acknowledged that it had failed to fully consider the request and issue a complete, substantive response. The specific reasons for this were a) that the Council was unable to verify which, if any, of the disclosed total figures were correct, and b) that the Council had not fully

considered that part of the request which sought a breakdown by year group for each school.

11. In the circumstances of this case the Council has acknowledged that it has not provided a complete substantive response under the terms of the FOIA. The Commissioner must therefore make a determination on this basis.

Reasons for decision

12. Section 1(1) of the FOIA 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 him.*

13. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
14. From the evidence presented to the Commissioner in this case, it is understood that the Council has failed to issue a complete substantive response to the request that complies with the FOIA.
15. On this basis the Commissioner must find that the Council has breached section 10 of the FOIA.

Other matters

16. In the circumstances of this case the Council has demonstrated a poor handling of the request, and has not fully considered the exact scope of the request before seeking to provide information to the requestor. It is also understood that the Council has sought to apply an exemption (section 40(2)), but has failed to issue a valid refusal notice under section 17 of the FOIA. The Council's poor handling has resulted in significant frustration for the requestor, who has repeatedly sought to engage with the Council, including through a meeting arranged by the Council, to pursue a proper response to his request.
17. The Commissioner reminds the Council of the importance and need to carefully consider the exact scope of a request before responding. Doing so will assist the Council in complying with the terms of the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

**Ben Tomes
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SK9 5AF**