

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2019

Public Authority: Essex County Council
Address: PO Box 11
County Hall
Chelmsford
Essex
CM1 1LX

Decision (including any steps ordered)

1. The complainant requested from Essex County Council ("the Council"), minutes from historic meetings held relating to a change of a specific school in the county to a comprehensive school. The Council explained that the information was accessible by other means and therefore has not provided the information requested.
2. The Commissioner's decision is that the Council has correctly applied section 21(2)(a) and section 21(3) of the FOIA and therefore requires no steps to be taken.

Request and response

3. On 9 January 2019, the complainant wrote to the Council and requested information in the following terms:

"Please can you provide me with the minutes relating to the change of the school to a comprehensive school in files E/MM 1215/1 E/MM 1216/1."

4. The Council responded on 10 January 2019. It stated that the information was accessible to complainant by other means, the Essex Records Office ("the ERO").
5. Following an internal review the Council wrote to the complainant on 8 February 2019. It stated that it upheld its original position and explained that under section 21(2)(a), the FOIA states that information may be regarded as reasonably accessible to the applicant even though it is accessible only on payment. In addition, the Council explained that within its publication scheme, it advises there may be a charge where information is obtained from the ERO.

Scope of the case

6. The complainant contacted the Commissioner on 8 February 2019 to complain about the way his request for information had been handled.
7. The complainant explained that initially, the ERO decided the information should not be disclosed due to the chance of the individuals who are mentioned within the minutes not being deceased. However, this was prior to his contact with the Council and the focus then changed to the application of section 21. The complainant also asked the Commissioner whether the charges levied for the provision of the requested information were appropriate.
8. The Commissioner considers the scope of this investigation to be whether the Council was correct to refuse the request under section 21 of the FOIA and whether the information is reasonably accessible to the complainant by other means.

Reasons for decision

Section 21 – Information accessible by other means

9. Section 21 of FOIA states that:

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) *information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

10. As detailed earlier, the Council refused the request on the basis that the information was reasonably accessible by other means. The Council had directed the complainant to the ERO in order to receive the information.
11. However, the complainant had previously been in touch with the ERO in order to acquire the information required for his research, and the ERO had explained that as there was personal information about pupils in the school, it may be unable to release the information. Because of this, it would require a closed search and this was charged at £30 per hour.
12. The Commissioner notes this and as her guidance¹ confirms, in point 10:
"If the information is held but is covered by another exemption in Part II of FOIA, section 21 cannot apply because, for that very reason, the information is not, in fact, reasonably accessible to the requester"
13. Therefore, to outline the reasons for the Commissioner's decision, she will explore the answers to the three following questions:
 - Do other exemptions prevent the information from being reasonably accessible?
 - Can the Council charge for information?
 - Is the charge of £30 per hour reasonable?

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

Do other exemptions prevent the information from being reasonably accessible?

14. As the ERO advised that it may be unable to disclose the information to the complainant due to some of it containing personal information, the Commissioner made enquiries with the Council about whether it knew if the withheld information would have attracted other exemptions. This is because if this was the case, the Commissioner would not have identified the information to be reasonably accessible to the requestor.
15. In its correspondence with the Commissioner, the Council explained that it had been in communication with the ERO relating to the request to determine whether the information that was requested was reasonably accessible, in terms of the use of other exemptions, or not.
16. The Council stated that the ERO understands the complainant is happy for any personal information to be redacted. However in correspondence between the Council and the ERO, the ERO suggested that the personal information may be difficult to redact and there maybe more charges that the complainant would face due to this.
17. The Council provided some correspondence to the Commissioner that contained discussion between the Council and the ERO. After the Council had clarified that the complainant's request was for the minutes relating to the change of the school to a comprehensive school, the ERO advised that it was fairly confident that it could perform a closed search and redact any personal information within an hour.
18. Therefore, as the ERO has confirmed to the Council that it is confident it could perform the searches and redact any personal information within the timeframe of one hour, the Commissioner sees that it has complied with section 21(2)(a) of the FOIA in terms of the accessibility of the information requested on 9 January 2019.

Can the Council charge for information?

19. The Commissioner has noted that the Council has detailed how such information can be accessed in its publication scheme and public guides available on its website, both of which make it clear as to the fees which will be charged.
20. The Commissioner has concluded that the information the complainant requested is reasonably accessible via other means. The requested information can be obtained on payment of a reasonable fee. Her guidance is as follows:

"Section 21(2)(a) states that information may be regarded as reasonably accessible to the applicant "even though it is accessible only on payment".

There are two main areas where information will be considered reasonably accessible even though payment is required – information that is available by means of other legislation which also permits a charge to be made, and information that is made available via a public authority's publication scheme. For example, Companies House is able to charge fees under various statutory regulations for the inspection or provision of copies of documents relating to the registration of companies and partnerships; and any public authority can charge for publications, which may include journals or books which it makes available on a commercial basis, as long as they are listed, together with the cost, in its publication scheme. In such cases, information is generally reasonably accessible even though the payment may exceed that which would be payable via FOIA."

21. The Commissioner has noted that the Council also detailed how some information would be accessible via the ERO in its publication scheme and the ERO also details the charges it makes available on its website, both of which make it clear as to the fees which will be charged.

22. The Council further supported its argument and stated the following:

"The requested information is available at the Essex Records Office (ERO), although as explained to [the complainant] there is a charge for this service.

As stated in our previous correspondence section 21(2)(a) states that information may be regarded as reasonably accessible to the applicant even though it is accessible only on payment.

In addition to this, we explained in our publication scheme that where information is obtained from the Essex Record Office, charges may be incurred, and to visit the ERO website for these details. This is in accordance with 21(3) of the Act."

23. The Commissioner has reviewed the Council's citation of section 21(3) of the FOIA. The FOIA states information held by a public authority that does not fall within subsection (2)(b), is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

24. At the time the request was made, the Council detailed within its publication scheme, that requests for information that would need to be handled by the ERO may incur a charge. In its policy relating to charging for information, the Council said the following:

"We charge for priced publications and information provided as part of a priced information service. More information is available in our List of Publications, which is available on the Essex County Council website."

25. When the request was made, in January 2019, this was available on the Council's website. However, at present, the website is being redeveloped.
26. Although the Council's publication scheme is currently unclear (at the time of writing) due to its website developments, the Commissioner is satisfied with the explanations the Council has provided to this and finds that in line with both sections 21(2)(a) and 21(3), it can charge for information.

Is the charge of £30 per hour reasonable?

27. In her enquiries to the Council, the Commissioner asked how the Council can justify the charge of £30 per hour to perform a closed search.
28. The Council responded to advise that the charges include staff time and overheads at the office for holding the information. As the quality of information needs to be preserved, the documents require specific conditions. Therefore to house or hold these in order to fulfil requests is costly.
29. The Council further explained that in this case, searches in closed records are carried out by one of the Record Office's archivists, their time is costed at about £24.20 per hour. The rest of the fee is used on overheads and administrative costs.
30. The Commissioner has evaluated both arguments and is satisfied with the explanations the Council has provided. She therefore accepts that the information requested on 9 January 2019 is reasonably accessible by other means and the Council has correctly applied section 21(2)(a) and also section 21(3) of the FOIA.

Other matters

31. The Commissioner notes that the Council's website is currently under development. While it is not currently complete, the page that should detail its publication scheme does not currently show it nor does it direct any requestors to the ERO to review the charges that may be made in that office for any specific publications or searches.
32. The Commissioner appreciates that at the time of the request, the notice of possible charges and the publication scheme were available on the Council's website, which the Commissioner has had sight of. Because of this, she can allow the Council's application of section 21(2)(a) and 21(3). Once this part of the website has been fully updated, this should avoid any future confusion for similar requests for information which the Council receives.

Right of appeal

33. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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
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