

Reference: FS50769503

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2019

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant requested from City of York Council (the Council) information related to procurement "low risk" contracts above £30,000 and below £100,000. The Council refused to comply with the complainant's request relying on section 21 as it considered the information requested to be reasonably accessible to the complainant.
2. The Commissioner's view is that the complainant's request was not clear since there was more than one objective reading of the request, therefore the Council was under an obligation under section 16(1) (advice and assistance) of the FOIA to contact the complainant under section 1(3) to seek clarification of the request. In failing to do so, the Council breached section 16(1) of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Write to the complainant seeking clarification of the request in relation to "*date and responsible staffer*" and "*entire financial year*".
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.

Background information

5. The previous request was made by the complainant on 26 November 2017 and requested information of the following description:

"In your report to A&G 16 Dec 2016 pg 27, you say that for 'smaller value or low risk contracts usually less than £30k' the rules are that 3 formal written quotes are required, retained and recorded on the contract register.

For the year sept 2016-2017 please provide the following

- 1. All records of all contracts £30k and above that were issued on the basis of three written quotes (as against 'formal invite', as in your report for £30-£100k alludes)*
 - 2. Please provide a link to these contracts on the contracts register*
 - 3. Please produce the policy and practice guidelines on what a 'low risk' contract is, and what system/person designates that a contract is 'low risk' and authorities for sign off.*
 - 4. In total how much was spent on contracts £30k and above which did not go through the more rigorous steps for seemingly £30-£100k, which includes evaluation of the bids (quite shocking this isn't done for all contracts)*
 - 5. As the Governance Risk and Assurance Group is key here, please provide the job titles and department of the members of that group, together with its terms of reference."*
6. In its response of 21 February 2018, the Council responded in relation to all 5 questions raised including certain clarifications. In response to parts 1 and 2 of the request the Council provided the complainant with a link to the contract register. In relation to part 3 of the request, the Council asserted that there is no single policy that determines the evaluation criteria and sign-off procedures and explained the procurement procedure. In response to part 4 of the request, the Council stated that the answer is "*£0, as every bid, quote or tender is evaluated*", whilst regarding part 5 of the request the Council provided a separate document containing the requested information.
7. The Council also advised the complainant that should they be dissatisfied with the response, to raise a complaint with the Commissioner. Upon receiving the outcome of the internal review, the complainant did not submit a complaint to the Commissioner about this information request.

Request and response

8. On 24 May 2018, referring to the previous request quoted above at paragraph 5, the complainant wrote to the Council and requested information in the following terms:

"Please can you replicate this foi but also add the date and responsible staffer this time please, to include the entire financial year would be very helpful."

9. On 21 June 2018 the Council responded. It refused to provide the requested information stating that this information is exempt under section 21 as it considered it to be reasonably accessible to the complainant, on the basis that the requested information was available online.
10. The complainant requested an internal review on 15 July 2018.
11. The Council provided the complainant with the outcome of its internal review on 23 July 2018. It upheld its original position.

Scope of the case

12. The complainant contacted the Commissioner on 25 July 2018 to complain about the way her request for information had been handled.
13. The Commissioner noted that, in addition to asking a replication of the previous request of 26 November 2017 but for a different time frame, the complainant also requested to add *"date and responsible staffer"* and *"to include the entire financial year"*.
14. Upon reviewing submissions of the parties in this case, the Commissioner's view is that the complainant's request to *"add the date and responsible staffer"* and *"to include the entire financial year"* was not sufficiently clear. Given this, she considered whether the Council was under an obligation under section 16 to seek clarification from the complainant about the request before proceeding with it.
15. The following analysis covers:
- Whether request had more than one objective reading and, if it did;
 - Whether the Council took adequate steps to clarify the request.

Reasons for decision

Section 16 - Duty to provide advice and assistance

16. Section 16 of the FOIA states that:

- 1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
 - 2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
17. Section 16 refers to the "code of practice". This refers to the code of practice issued by the government under section 45 of the FOIA, which provides standards and guidance on how a public authority should discharge its duties under Part 1 of the FOIA. The latest version is dated 4 July 2018 and is called the *Freedom of Information Code of Practice*; however, the Commissioner notes that the version in force at the date of the complainant's request dates from November 2014 and was entitled *The Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000* ("the code").
18. As stated in the code, one of its aims is to *"protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them"*.
19. The Commissioner has published guidance on interpreting and clarifying requests¹, where it is stated that public authorities must interpret information requests objectively. They must avoid reading into the request any meanings that are not clear from the wording.
20. The guidance provides that *"if a public authority can objectively read an information request in more than one way it may need further information in order to identify the information requested. Section 16 requires a public authority to assist the applicant to clarify the request under these circumstances"*. It should not guess which interpretation is correct.

¹ <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

21. In this case, as set out above, the request was made on 24 May 2018 and sought to replicate a previous request followed by "*the date and responsible staffer*" and "*to include the entire financial year*".
22. As the Commissioner's guidance makes clear, the code does not require a public authority to assist applicants in describing the information more clearly if it can deal with the request as it has been presented.
23. However, going back to the text of the present request, the Commissioner notes that its formulation lacks clarity and provides different possibilities of interpretation. When read objectively, the last parts of the request which state "*add the date and responsible staffer*" and "*include the entire financial year*" are not clear.
24. Firstly, it is not clear what the complainant meant by "*date*". Whether it was date when the contracts were awarded or the commencing date of contracts or when they were actually completed. Similarly, it was not sufficiently clear what the complainant meant by "*responsible staffer*" and which financial year she was referring to.
25. Having examined the submissions of both parties, the Commissioner notes that the Council did not make any attempt, at any stage of the handling of this request, to seek clarification from the complainant.
26. By omitting to do so, the Commissioner finds that the Council failed to comply with the requirements stipulated in section 16(1) of the FOIA. At paragraph 3 above the Council is now required to write to the complainant and seek clarification about her request.

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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF