

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2012

Public Authority: Sunderland Council

Address: Civic Centre
PO Box 100
Burdon Road
Sunderland
SR2 7DN

Decision (including any steps ordered)

1. The complainant requested the name of a person who ordered a council officer not to speak to him. The council initially applied section 14 to the request as it stated that the request was vexatious. It says it did this based on the view that the complainant already knew that no information was held which could answer his request. However the Commissioner considered the correspondence provided to him and told the council that he did not consider that the council had clearly stated to the complainant that no information was held. The council then withdrew its reliance on section 14 and issued a new notice, clarifying that no information was held.
2. The Commissioner's decision is that Sunderland Council breached the section 10(1) of the Act in that it did not respond within 20 working days of the receipt of the complainant's request. He also finds that on a balance of probabilities no information is held by the council which could respond to the complainant's request.

Request and response

3. On 20 April 2011, the complainant wrote to Sunderland Council and requested information in the following terms:

"Who in the council told [name of officer redacted] not to speak to me"

4. Sunderland Council responded on 15 June 2011 applying section 14 of the Act to the request. Section 14 exempts an authority from complying with section 1 of the Act where the request is vexatious. This means that it does not have to tell a complainant whether any information is held and that it does not have to consider whether any information should be disclosed to him.
5. In the same response the council provided the explanation that due to the circumstances of the case, *"it was determined that there was no mutual benefit to be had in your correspondence with [name redacted] as he was not in a position to assist you - this being more a realisation that continued correspondence would be futile rather than any 'instruction' not to speak to you."*
6. The council subsequently clarified that it considered this response to also be its review response because of the past history of the complainant's contact with the council.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated that the council should provide him with the name of the person concerned.
8. The council's initial position was that the request was vexatious. The Commissioner therefore contacted the council and asked the council for its reasons for deeming the request vexatious. The council indicated that this was because the complainant already knew that no information was held when he made his request.
9. The Commissioner responded stating that he did not consider that that was clear from the information which he had received from the council or the complainant. It seemed to him that the council's responses did not specifically state that no information was held and that its response of 15 June 2011 left the situation ambiguous.
10. The council considered this position and agreed that, in retrospect. Its responses could have been clearer as to whether information was held or not. Although it considered that it had stated to him in the past that no information was held, it therefore agreed to withdraw its reliance on section 14, and wrote to the complainant stating clearly that no information was held which could respond to his request.
11. The Commissioner has not therefore considered the council's application of section 14 further in this notice.

Reasons for decision

Section 10

12. Section 10(1) of the Act states that

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

13. The complainant made his request for information on 20 April 2011.

14. The council responded to the complainant's request but it did not do so until 15 June 2011.

15. The request was not therefore responded to within twenty working days as required by section 10(1). The council therefore breached section 10(1) in this respect.

16. Further to this its response applied section 14 to the Act, albeit that it did try to clarify that it did not hold any information falling within the scope of the request.

17. It did not therefore issue a full refusal notice, stating that no information was held until it withdrew its reliance on section 14 and responded to the complainant on 5 April 2012.

18. The Commissioner therefore recognises that the council breached section 10 (1) of the Act in this respect also.

Is any information held?

19. As part of his investigation into the council's decision that the request was vexatious the Commissioner asked the council to confirm whether any information was held which could respond to the complainant's request. The council clarified at that point that it does not hold information which could respond to the request.

20. The council also stated that it had asked the officer involved if anyone had told him not to speak to the complainant and that he did not recollect being told not to speak to him. The council also stated that there 'is and was no information which could respond to the request'.

21. Where an authority relies on the argument that it does not hold information when responding to a request, the Commissioner must be satisfied 'on a balance of probabilities' that no information is actually held by the authority.

22. In this case the Commissioner is satisfied from the responses of the council that on a balance of probabilities, no information is held by the council in respect of this request.
23. It is noted that if an instruction was made verbally to the officer and no record was taken of that conversation then the Act would find that no information is held. The Act only applies to information which is held in recorded form by the authority. The Commissioner could not therefore require the council to disclose information if there is no record of that information at the time that the request was received by the authority.

Other Matters

24. The complainant has stated that he would like the Commissioner to require the authority to issue an apology to him for its actions. The Commissioner has no powers to require the authority to apologise to the complainant however.

Right of appeal

25. 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

26. 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.
27. 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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