

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 May 2012

Public Authority: Rochdale Borough Council
Address: Municipal Offices
Smith Street
Rochdale
Lancashire
OL16 1YR

Decision (including any steps ordered)

1. The complainant made three associated requests to Rochdale Borough Council (the 'Council') during July and August 2011. Whilst receipt of each of the requests was acknowledged by the Council, no substantive responses have been provided to the complainant for any of the three requests. The Information Commissioner's decision is the Council did not deal with the three requests for information in accordance with the FOIA. The Council breached section 10(1) of FOIA by failing to provide a response to the requests within the statutory timeframe of 20 working days.
2. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - confirm or deny whether the requested information is held in respect of each of the three requests, to comply with section 1(1)(a);
 - if information is held in respect of each request, either provide the information to comply with section 1(1)(b), or withhold the information by issuing a valid refusal notice(s) under section 17(1) of FOIA.
3. The public authority 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

4. This notice has been issued in respect of three separate but associated requests as detailed below.

Request 1

5. On 18 July 2011, the complainant wrote to the Council and requested the following information:

"I would be grateful if you would please tell me how long emails are retained by the council and whether there is any legislative requirement in this respect.

Thank you in anticipation of an early reply."

6. The Council acknowledged receipt of the request on 19 July 2011 but, based on the information provided to the Information Commissioner, it has not responded to date.

Request 2

7. On 19 July 2011, the complainant wrote to the Council and requested the following information:

"Further to previous correspondence in particular my letters of 9 May, 16 June, 29 June and 14 July 2011 to which I haven't received any response save for a letter from [employee's name redacted] dated 28 June 2011.

How many disciplinary hearings have been held since April 2004 when I joined the authority?

Of those how many were adjudicated in favour of the employee (I suspect none)

Of those that went against the employee how many went to appeal?

Of those that went to appeal how many were adjudicated in favour of the employee? (Again I suspect none)

I make my request in the interests of natural justice but also in line with the Freedom of Information Act.

Thank you in anticipation of an early reply."

8. The Council acknowledged receipt of the request on 21 July 2011 but, based on the information provided to the Information Commissioner, it has not responded to date.

Request 3

9. The complainant made a further request on 2 August 2011 for the following information; the full text of the request can be found at Annex A of this notice:

"I formally request copies of all the emails received in my rochdale [sic] email account from 2 Jan 2009 to date. I will be making a formal application to the court, who are also aware of the issue."

11. The Council acknowledged receipt of this request on 21 July 2011 but, based on the information provided to the Information Commissioner, it has not responded to date.

Scope of the case

12. On 1 February 2012 the complainant contacted the Information Commissioner to complain about the way his requests for information had been handled. He specifically asked the Information Commissioner to consider the fact that no substantive responses had been provided.
13. On receipt of the complaint, the Information Commissioner wrote to the Council on 3 April 2011, asking it to provide responses to the three requests within ten working days of receipt of his letter. He asked the Council to consider whether some of the information requested would constitute the personal data of the complainant, and to treat any such aspects as subject access requests under the Data Protection Act.
14. The Council wrote to the Information Commissioner on 24 April 2012 to advise that it had not been able to provide the requested information within the timescales due to staff annual leave and sickness; it has yet to provide the complainant with substantive responses to any of his requests.

Reasons for decision

15. Section 8(1) of FOIA states that requests for information should be in writing, should bear the name and address of the applicant and describe the information requested. The Information Commissioner considers that

the requests in this case can be defined as such and therefore constituted valid requests under FOIA for recorded information.

16. Section 10(1) of FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
17. From the information provided to the Information Commissioner it is evident that the Council did not respond to the complainant within the statutory time frame.

Conclusion

18. The Information Commissioner's decision is that the Council did not deal with the three requests for information in accordance with FOIA. The Council breached section 10(1) of FOIA by failing to provide a response to the three requests within the statutory timeframe of 20 working days.

Right of appeal

19. 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

20. 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.
21. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

The request of 2 August 2011 in its entirety with the complainant's underlining and 'bold' text included is as follows:

"Further to my letter to the chief executive of 15 October 2009.

You may or may not recall I worked for the authority previously.

I was dismissed following breach of the IT regulations.

I requested copies of all the emails received in my Rochdale email account [complainant's work email address redacted] on 13 October 2009.

To date I haven't been provided with them although I was provided with a batch said to be received between July and December 2009.

We were later told that the emails could not be disclosed because they are routinely deleted after 90 days.

You and I both know this is not true. The fact that the batch of emails from July-Dec 2009 were disclosed proves this.

I have made a formal complaint to the police in respect of that statement which because it was said under oath amounts to perjury and for conspiracy to pervert the course of justice.

I formally request copies of all the emails received in my rochdale email account from 2 Jan 2009 to date. I will be making a formal application to the court, who are also aware of the issue.

If the emails are not available I will be asking who by, why and on whose instruction given a commitment was given by the authority to maintain the integrity of my email account and computer.

Given this matter is subject to legal proceedings any such deletion will also be an act of contempt of court as well as an attempt at conspiracy to pervert the course of justice.

I look forward to hearing from you as a matter of urgency.

*I will also be seeking access to my historic email folders in due course. I **know** these had been retained since April 2004 do there is no reason they should not be available now."*