

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2013

Public Authority: Wirral Borough Council
Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant requested information relating to the absence of a senior member of the council's staff. The council said that some information was already publicly available and that it wished to rely on section 40(2) of the Freedom of Information Act 2000 ("the FOIA"), the exemption relating to third party personal data. During the Commissioner's investigation, the council said that it had incorrectly relied on the exemption because all the information held was in fact already publicly available. It confirmed this to the complainant and said that it did not hold any further information.
2. The Commissioner's decision is that the council breached section 1(1)(a), 1(1)(b) and 10(1) of the FOIA for failing to respond properly to the request. These provisions relate to the duty to confirm or deny whether recorded information is held, provide information that is held and respond to requests within 20 working days.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 13 June 2012, the complainant requested information from the council in the following terms:

"On 13th June 2012 during a public meeting hosted by Council Officials and Councillors, it was reported that , [name] Wirral MBC's [job title], is suffering from ill health which means he is likely to be granted early

retirement due to ill health.

Is this information correct and can this information be officially collaborated by the Council? Alternatively, if this information is incorrect (either wholly or in part) please disclose accurately [name]'s current status in terms of fulfilment of his normal duties as [job title].

Please provide as much detail as possible including the name of the officer currently who has assumed [name]'s duties and responsibilities during absence from his office, if applicable".

5. The council responded on 19 September 2012 and it confirmed the name of the individual who is currently undertaking the responsibilities of officer. The council also said "The position relating to [name] has been made public as referred to in the report quoted in the request". The council said that it was unable to disclose any further information and it cited the exemption under section 40(2) of the FOIA.
6. The complainant requested an internal review on the same day.
7. The council completed its internal review on 25 September 2012. It said that it wished to maintain its reliance on section 40(2).

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the council had correctly withheld the information using section 40(2).
9. During the Commissioner's investigation, the council conceded that all the information held was in fact already publicly available and it confirmed the details to the complainant. It explained that the officer's status at the time was that he was on suspension and it had also been reported in public council minutes that he was suffering from ill health. It said that it did not hold any information showing that early retirement on the grounds of ill health was likely. In light of this clarification, the substantive issues were informally resolved and it was not necessary to consider the application of the exemption.

Reasons for decision

Procedural issues

10. Section 1(1)(a) and (1)(1)(b) provide a general right of access to recorded information held by public authorities. Public authorities should confirm or deny whether recorded information falling within the scope of a request is held and if so, it should provide it to the requester unless a valid reason exists for not doing so.
11. In this particular case, the council failed to state that it did not hold information showing that early retirement of the officer on the grounds of ill health was likely. It also did not confirm that it held information showing that the officer was suffering from ill health since the only information withheld using section 40(2) was the information that the officer had been suspended. The council therefore breached section 1(1)(a).
12. The council failed to provide information that was held to the requester in response to his request, breaching section 1(1)(b). The information it failed to provide was the detail that the officer had been suspended and confirmation that he was suffering from ill health.
13. The council failed to comply with section 1(1)(a) and (b) within 20 working days and therefore also breached section 10(1).

Right of appeal

14. 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

15. 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.
16. 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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Wycliffe House
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