

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2013

Public Authority: Wirral Borough Council
Address: Municipal Buildings
Cleveland Street
Birkenhead
Merseyside
CH41 6BU

Decision (including any steps ordered)

1. The complainant requested information in relation to the departure of a former Wirral Borough Council (the council) Chief Executive Officer. The council advised that it did not hold some of the requested information. It provided a link to some information already in the public domain and relied on section 40(2) of the FOIA not to provide the remainder. The council revisited the request again following the Commissioner's investigation and it provided a fresh response in which it confirmed that it did not hold some of the information it initially relied on section 40(2) of the FOIA to withhold. The council still maintained section 40(2) of the FOIA to parts of the information it did hold and provided 3 subsequent documents to the complainant.
2. The Commissioner's decision is that the council has breached section 10 of the FOIA as it provided its response to the complainant outside of the required 20 working days following the receipt of the request.
3. As the council has now provided a response to the request, the Commissioner requires no steps to be taken.

Request and response

4. On the 7 June 2012, the complainant wrote to the council via the *WhatDoTheyKnow.com* website and provided some background information and then requested information in the following terms:

"Please provide all information you have which is connected to the departure of [named Chief Executive Officer]. This will relate to meetings, hearings, discussions, and may be stored in the

form of recorded minutes, verbatim and non-verbatim notes, emails, letters, memos, aide memoirs, whether electronically or manually. Please confirm and provide details of the existence of any payments made to [named Chief Executive Officer] in relation to his departure. This will include precise amounts, the method of payment and the budget from which the payment was derived. Please confirm details of the existence of any "compromise agreement" or "confidentiality agreement" signed by [named Chief Executive Officer] in relation to this departure or to his involvement in abuse or malpractice. This will include confirmation and description of any 'gagging clauses' and whether a positive / neutral / negative reference was provided regarding potential future employment. Please provide the names and addresses of all organisations / bodies involved in providing legal advice to [named Chief Executive Officer]. Please also provide details of meetings which occurred including times, dates and matters discussed.

Please confirm the details of any disciplinary charges either planned or levelled against [named Chief Executive Officer] in relation to any failures /malpractice / abuse which brought about his departure from the Council. If [named Chief Executive Officer] was provided with a "clean bill of health" regarding his time served at the council, please provide a copy of this / these document(s). Please redact documents as you see fit, and remove any personally sensitive information in accordance with the requirements of the Data Protection Act."

5. The complainant requested an internal review on the 6 July 2012 as he had not received a response from the council.
6. The council acknowledged the request on the 3 August 2012 advising that it would respond as soon as the information was available.
7. The complainant contacted the Commissioner on the 5 October 2012 as he had still not received a response from the council.
8. Following contact from the Commissioner, the council provided the complainant with a response on the 12 December 2012. It advised that it did not hold some of the requested information, provided a link to some information already in the public domain, and it refused to provide the remainder of the requested information, relying on section 40(2) of the FOIA not to provide it.
9. The complainant advised the Commissioner that he was not satisfied with the council's response where it relied on section 40(2) of the FOIA not to provide the information.

10. During the course of the Commissioner's investigation, the council provided him with a copy of the withheld information along with its reasons for withholding it under section 40(2) of the FOIA.
11. On reviewing the withheld information, it became apparent to the Commissioner that the council had relied on section 40(2) of the FOIA for parts of the complainant's request for which the council held no information. The Commissioner confirmed this with the council, who subsequently revisited the request and issued the complainant with a fresh response on 24 September 2013, stating which parts of the request it did not hold information on where it had previously relied on section 40(2) of the FOIA to withhold.
12. The council still relied on section 40(2) for part of the request and also provided 3 additional documents.

Scope of the case

13. The complainant has advised the Commissioner that although he is now satisfied with the council's response of the 24 September 2013, he is not satisfied with the time it took the council to respond to his request and has asked the Commissioner to issue a decision notice to record a breach of its response time.
14. The Commissioner considers the scope of the case is to determine whether the council has breached section 10 of the FOIA.

Reasons for decision

15. Section 10 of FOIA provides that a public authority should provide a response to an information request within 20 working days of its receipt.
16. In this case, the complainant made his information request on the 7 June 2012 and council did not provide a response until 12 December 2012 and its final response until 24 September 2013.
17. In considering the above, the Commissioner finds that the council breached section 10 of the FOIA as it did not provide a response within the required 20 working days from the receipt of the request.

Right of appeal

18. 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

19. 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.
20. 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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