

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 November 2009

Public Authority: Knowsley Metropolitan Borough Council
Address: PO Box 21
Archway Road
Huyton
Knowsley
Merseyside
L36 9YU

Summary

The complainant submitted a request to Knowsley Metropolitan Borough Council (the Council) for documents. A response to the request was not provided. The Commissioner's decision is that the Council failed to comply with section 1(1)(a) and section 1(1)(b) of the Act and must now do so within 35 calendar days of the date of this notice. The Commissioner found that Knowsley Metropolitan Borough Council breached section 10(1) of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 3 April 2009 the complainant requested the following information:

All email communication between your Chief Executive that mentions "Everton" in the months of November and December 2006.

3. On 24 April 2009 Knowsley Metropolitan Borough Council wrote to the complainant and stated that it held records of emails for a rolling period of twelve months. Therefore the information requested was not held. The Council advised

the complainant that email records dating from April 2008 were available should he wish to request them.

4. The complainant made a new request on 8 May 2009. He requested

All email communication between your Chief Executive that mentions "Everton" in the months of May and June 2008.
5. On 19 June 2009 the Complainant contacted the Council to enquire when he might receive the information he had requested.
6. On 01 July 2009 the Council wrote to the Complainant stating that the process of recovering the back-up tapes which recorded the emails requested was still on-going.

The Investigation

Scope of the case

7. On 19 June 2009 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request of 8 May 2009. It is this second request that is the subject of the notice.

Chronology

8. The Information Commissioner's Office telephoned Knowsley Metropolitan Borough Council on 2 October 2009. The Council accepted that it had not yet provided a response to the complainant.
9. The Commissioner notes that Knowsley Metropolitan Borough Council has not responded to the complainant's request since that date, or indicated when it expects to respond either directly to the complainant or to the Commissioner.

Analysis

The full text of relevant sections of the Act are provided in the Legal Annex.

Procedural Requirements

Section 1

10. The Commissioner considers that the Council has failed to comply with sections 1(1)(a) and 1(1)(b) of the Act to date, as it has not provided a response to the complainant for the request made on 8 May 2009.

11. The Commissioner is aware that in its correspondence dated 24 April 2009 the Council had advised the complainant that it held e-mail records dating from April 2008. However, the Commissioner notes that this pre-dated the request and thus cannot be said to be a response to the request. He also considers that, in any case, confirmation that e-mail records dating from April 2008 onwards are held is not confirmation that e-mails involving the Chief Executive from May and June 2008 which mention 'Everton' are held.

Section 10

11. The Commissioner considers that Knowsley Metropolitan Borough has breached section 10(1) of the Act as it failed to respond to the request for information within twenty working days following the date of receipt.

The Decision

12. The Commissioner's decision is that Knowsley Metropolitan Borough Council has breached section 10 of the Act in failing to comply with section 1(1) within twenty working days following receipt of the request.

Steps Required

13. The Commissioner requires Knowsley Metropolitan Borough Council to respond to the complainant's request in accordance with section 1(1)(a) of the Act by informing the complainant whether it holds the information, or issuing a refusal notice explaining why it is excluded from the section 1(1)(a) duty to confirm or deny if information is held. If the information is held, then the Council should respond to the complainant's request in accordance with section 1(1)(b) of the Act by either communicating the information requested to him or issuing a valid refusal notice. Any refusal notice issued should comply with the requirements of section 17.
14. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

15. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

16. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 2nd day of November 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Time for Compliance

Section 10(1) provides 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.”

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”