

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 13 January 2014

**Public Authority:** Stoke-on-Trent Council  
**Address:** City of Stoke-on-Trent  
Civic Centre  
Glebe Street  
Stoke-on-Trent  
ST4 1HH

#### **Decision (including any steps ordered)**

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1. The complainant requested information about Spode, in Stoke.
2. The Commissioner's decision is that Stoke-on-Trent Council provided the requested information after the 20 working day time limit, therefore it breached section 10(1).
3. The Commissioner does not require Stoke-on-Trent Council to take any further steps.

#### **Request and response**

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4. On 2 April 2013, the complainant wrote to Stoke-on-Trent Council (the council) and requested information.
5. On 5 July 2013 the council responded, providing the requested information.

#### **Scope of the case**

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6. The complainant contacted the Commissioner on 3 July 2013 to complain about the way his request for information had been handled. At the time of his complaint, the council had not responded to his request.

7. The Commissioner will consider the length of time taken by the council to respond to the complainant's request.

### **Reasons for decision**

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8. Section 10 of FOIA states that a public authority must comply with section 1(1)<sup>1</sup> promptly and in any event not later than the twentieth working day following the date of receipt.
9. In order for the council to have complied with section 10(1), it should have responded to the complainant by 30 April 2013, but in fact it did not respond until 5 July 2013, when it provided the complainant with the requested information.
10. The Commissioner considers that the council has therefore breached section 10(1).

### **Other matters**

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11. The complainant requested an internal review on 29 May 2013. The Commissioner notes that the council had not responded to the complainant's original request at this point. He also notes that the council did not subsequently respond to the complainant's request for an internal review.
12. The council explained that in a situation like this, where a complainant asks for an internal review about the length of time taken to deal with a request, it could be seen as the complainant using up their right to an internal review of any response given by a public authority in response to the actual request.
13. The Commissioner considers that for the purposes of the FOIA, an internal review allows a public authority to review its refusal notice. This

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<sup>1</sup> Section 1(1) states: "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".

view is supported in the First-tier Tribunal decision of *McIntyre v the Information Commissioner and the Ministry of Defence (EA/2007/0068)*, which was considered under FOIA and states:

*"...the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made..."*

14. Therefore, the Commissioner does not consider that if, an applicant queries a public authority's non-response to a request, the applicant has used up the right to request an internal review of a subsequent refusal notice.

## Right of appeal

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15. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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**