

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2015

Public Authority: Canterbury City Council
Address: Council Offices
Military Road
Canterbury
Kent
CT1 1YW

Decision (including any steps ordered)

1. The complainant has requested information regarding market occupancy from Canterbury City Council (the council). The council has acknowledged the request but has failed to issue a valid response under the FOIA.
2. The Commissioner's decision is that the council has failed to respond to the request within the statutory time for compliance in breach of section 10 of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a response compliant with the terms of the FOIA in answer to the complainant's request of 4 October 2014.
4. 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

5. On 4 October 2014 the complainant made the following request for information under the FOIA:

"Please arrange for me to be provided with information on market occupancy, as laid out in FOI 4090, for May, June, July, August, September and October 2014, up until the answer is supplied."

6. The council acknowledged the request on 4 October 2014 and provided a more detailed acknowledgement on 6 November 2014 which stated that:

"no further requests for information on this matter about markets will be answered until the matter you discussed has been fully investigated."

Once that has been concluded we will reconsider your request and advise you of the outcome."

Scope of the case

7. The complainant contacted the Commissioner on 7 November 2014 complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the request to be to determine whether the council handled the request in accordance with the requirements of the FOIA.

Reasons for decision

9. Section 1 of FOIA requires that, upon receipt of a request for information, a public authority confirms whether it holds that information and, if it does, to communicate that information to the applicant unless the information is exempt or there are other grounds for refusing the request.
10. If there are grounds for refusing the request, the public authority must issue a refusal notice in accordance with section 17 of FOIA, explaining why it has refused the request. The section 17 refusal notice must also provide details of any internal review procedure that the public authority operates, together with applicant's right to complain to the Commissioner.

11. Section 10(1) of FOIA requires that the public authority either complies with section 1, or issues a refusal notice in accordance with section 17, promptly and in any event not later than the twentieth working day following receipt of the request.
12. The Commissioner wrote to the council on 12 November 2014 and advised it that it needed to issue a full response under the FOIA, either providing the information or issuing a valid refusal notice under section 17. He provided the council with links to his guidance for more information about how to respond.
13. The council then wrote to the complainant again on 14 November 2014 and stated:

"... whilst this investigation is ongoing, it is considered the release of any further information should be postponed. I am not saying we will not release it, just that there will be a delay in releasing it. I am sorry this is not what you want to hear, but I can only advise that there will be a delay until this investigation is finalised."
14. The Commissioner finds that the council has failed to handle the request in accordance with the provisions of FOIA. It should have either confirmed whether it held the information and, if so, communicated that information in accordance with section 1, or issued a refusal notice under section 17 explaining its grounds for refusing the request.
15. The council should have taken that action within 20 working days of receipt of the request, that is by 31 October 2014, as it has not done so, this is a breach of section 10(1).

Right of appeal

16. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF