

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2015

Public Authority: Cheshire West and Chester Council

Address: HQ Building
Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant asked Chester West and Chester Council for its procedure for investigating complaints about planning matters.
2. The Commissioner's decision is that the Council failed to respond to the complainant's request within the twenty day compliance period provided by section 10 of the FOIA. The Council has therefore breached section 10.
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 17 June 2015, the complainant sent an email to the Planning Department of Cheshire West and Chester Council. The complainant's email concerned a complaint he had previously made to the Council about an alleged unauthorised change of use of land at Mill View Primary School.
5. Contained within the complainant's email was the following request for information:

"It is my understanding that the council has not published a planning enforcement policy (section 207 of the National Planning Policy Framework refers). I therefore also request that you provide me with a copy of your documented procedure for investigating planning complaints."

6. The Council acknowledged its receipt of the complainant's email also on 17 June.
7. On 12 August the complainant wrote to the Information Commissioner to complain about the failure of the Council to send him the information he seeks. The complainant's email prompted the Commissioner to write to the Council about this matter.
8. The Council responded to the Commissioner's email on 18 September, advising the Commissioner that the complainant's request was contained within an '.htm' attachment and that this had been overlooked. The Council explained that it had responded to the complainant's request and had done so under its 'normal business' practice, choosing to deal with the complainant's request in this way because its procedure for investigating planning complaints is readily available on the Council's website.
9. The Council confirmed to the complainant – also on 18 September, that it holds the information he seeks and advised him that it investigates planning complaints under its corporate complaints policy. This policy takes into account the Council's planning enforcement policy.
10. The Council provided the complainant with the following links to where these policies can be found on its website:

http://www.cheshirewestandchester.gov.uk/residents/planning_and_building_consulta/planning_service/planning_enforcement.aspx

http://www.cheshirewestandchester.gov.uk/contact_us/complaints_and_feedback/comment_complain.aspx
11. Having received the Council's response, the complainant wrote to the Council and asked it to carry out an internal review. The complainant stated that, 'it is clear that the Council has not responded to my request for access to its documented procedure for investigating planning complaints', and it is 'not even clear whether such a procedure actually exists'. The complainant made clear that he seeks confirmation of whether the Council has the planning enforcement protocols that are recommended by S107 of the National Planning Policy Framework.
12. The complainant also made clear that his request was contained in the body of his complaint to the Planning Department and not, as the Council had stated, in a pdf or htm attachment and he stated that he does not 'consider that the response provides anything approaching reasonable justification' for its lateness.

Scope of the case

13. The complainant contacted the Commissioner on 18 September 2015 to complain about the way his request for information had been handled. The complainant asked the Commissioner to issue a decision notice in respect of his complaint about the Council's late response.

Reasons for decision

14. Section 1 of FOIA states 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."

15. Section 10 of the FOIA states that:

"...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."

16. In this case the Council received a request for recorded information which satisfied the requirements of section 8 of the FOIA: The request was made in writing; it described the information which the applicant seeks; and, it provided the Council with the applicant's name and address for correspondence.
17. In this case the Council did not respond the complainant's request until the Commissioner's intervention. This was clearly because the request was contained in a letter to the Council's Planning Department and not made to through the Council's normal channel for information requests. Consequently the complainant's request was overlooked.
18. The Commissioner can see why the request was overlooked, particularly given that it was contained in a letter which set out the details of a complaint about the change of use at Mill View Primary School and that it was sent to the Planning Department rather than being made through the Council's normal channel.

19. On the facts of this case, The Commissioner has decided that the Council has contravened section 10 of the FOIA for failing to respond to a request for information within twenty working days.

Other matters

20. The Commissioner certainly accepts that public authorities can deal with many requests by providing the requested information in the normal course of business. This is particularly so where the requested information is included in the authority's publication scheme and where the information is normally provided to the applicant automatically through the provision of a link to where the information can be accessed.
21. In this case however, the Commissioner must reject the Council's assertion that it ultimately responded to the complainant's request under its normal business practice. The Commissioner points out that the Council did not provide any response to the complainant's request until he had complained to the Commissioner, and until the Commissioner had intervened.
22. The Commissioner has no doubts that the Council would have responded to the complainant's request under its normal business practice and in a timely manner, had the request not been overlooked.
23. However, in order to deal with requests for information under normal business practices, the public authority must have sufficiently robust procedures in place which enable those requests to be properly dealt with.
24. Whilst the option of dealing with a request under its normal business practices is open to the Council, the Council must ensure that where the request is for recorded information, and where it meets the statutory requirements for a request, the business practices must be compliant with the requirements of the appropriate information access regime – the FOIA, the Environmental Information Regulations or the Data Protection Act.

Right of appeal

25. 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

26. 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.
27. 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