

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 June 2016

**Public Authority:** City of York Council  
**Address:** West Offices  
Station Rise  
York  
YO1 6GA

#### Decision (including any steps ordered)

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1. The complainant has requested information concerning Oakhaven Care Home in York. At the date of this notice, City of York Council ('the Council') has not provided a substantive response to this request.
2. The Commissioner's decision is that the Council has breached section 10(1) of the FOIA (time for compliance) because it has not responded to the request within 20 working days.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
  - Comply with the request, which was clarified on 12 November 2015, or issue a valid refusal notice as set out in section 17 of the FOIA.
4. The public authority must take this step 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

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5. On 10 September 2015, the complainant wrote to the Council and requested information in the following terms:

*"I wish to make a freedom of information request in relation to the following statement made in a letter dated 7th September 2015 by*

*Michael Melvin, Assistant Director Adult Social Care - 'Each of the council's seven care homes have been assessed against a criteria looking at age and condition of the building, the needs of residents, staffing issues, future plans for the sites and financial factors, to assess which should first be considered for closure.'*

*In relation to the statement I require all documents which have been used to underpin this statement in relation to Oakhaven care home situated in Acomb, York. The documents are likely to include emails, letters, minutes of meetings, reports, records of phone conversations, records of Skype /video conferencing, file notes, photographs. Please not [sic] this is not an exhaustive list.*

*Furthermore I would also like all documents in relation to any valuations of the Oakhaven site in the last five years."*

6. The complainant has told the Commissioner that on 9 October 2015 he requested an internal review as he had not received a response from the Council. By return, the Council said it had replied on 8 October 2015, and it resent this correspondence to the complainant by email on 9 October 2015. In this correspondence, the Council asked the complainant to clarify his request. However, its letter also included a number of links to where some information it considered to be within the scope of the complainant's request is published online.
7. The complainant says he contacted the Council on 12 October 2015 because he was unable to open the links to the published information. He told the Council that he considered his request to be clear but advised the Council who the appropriate person would be to approach, namely Michael Melvin. The complainant appears to have resent this email to the Council on 12 November 2015.
8. In an email to the complainant dated 1 December 2015, the Council confirmed the scope of the request. It said it was trying to process the request but the relevant team had been extremely busy. The Council also said that it had made previous attempts to understand the complainant's concerns by offering face to face meetings. Finally, the Council referred to the web links that the complainant could not open. The complainant expressed dissatisfaction with this response in an email to the Council dated 5 December 2015.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 2 February 2016 to complain about the way his request for information had been handled. At that point he had had no further correspondence from the Council

10. The Commissioner explained to the complainant that the Council's request for clarification of 8 October 2015 was issued on the twentieth working day following receipt of the request. The Commissioner noted that, while the timing of this contact was disappointing, it was technically within the time limit provided by the FOIA.
11. The Commissioner wrote to the Council on 23 February 2016 and requested that it provide a substantive response to the complainant's request within 10 working days.
12. On 15 June 2016, the complainant confirmed to the Commissioner that he still had not received a response.

### **Reasons for decision**

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13. Section 1(1) of the FOIA says that an individual who requests information from a public authority is entitled to be informed whether the information is held and, if it is, to have that information communicated to him or her.
14. Section 10(1) of the FOIA says that a public authority must comply with section 1(1) - that is, respond to a request for information - no later than the twentieth working day following the date of receipt.
15. The complainant submitted his request on 10 September 2015 and clarified it on 12 November 2015. More than six months later, he has yet to receive a substantive response. This is a clear breach of section 10(1).

## Right of appeal

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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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**