

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2019

Public Authority: Cherwell District Council

Address: Bodicote House
White Post Road
Bodicote
Banbury
Oxfordshire
OX15 4AA

Decision (including any steps ordered)

1. The complainant requested information from Cherwell District Council ("the Council") about council property tenants and unauthorised short-term/holiday lets.
2. The Commissioner's decision is that the Council has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the FOIA.
4. The Council 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 30 July 2019, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act, please provide:

- the number of council property tenants who have been investigated for unauthorised short-term/holiday lets (e.g. Airbnb)*
- the number of council property tenants that have received warnings about unauthorised short-term/holiday lets (e.g. Airbnb)*
- the number of council property tenants that have received any other penalty for unauthorised short-term/holiday lets (e.g. Airbnb) (please provide information about any such penalties)*

Please provide this information broken down by financial year for the past three years (i.e. 2016/17, 2017/18, and 2018/19).

Please could you provide this information as a spreadsheet or CSV file."

6. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 14 October 2019 to complain about the failure by the Council to respond to her request.
8. The Commissioner has considered whether the Council has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. Section 1(1) of the 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.

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt."
11. On 12 November 2019 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days.
12. Despite this intervention the Council has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the Council has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Other matters

14. The Commissioner and the complainant both encountered no responses to correspondence sent to an email address that was previously the Council's preferred contact point for information requests. The Council confirmed that, whilst that email address is still active, it is no longer monitored.
15. The Council should be aware that a request made to any of its valid addresses, including email addresses, will have been considered received by it for the purposes of the FOIA. It is not the case that a valid request can only be made to its preferred contact point. The Council must, therefore, ensure that it monitors all possible means by which it may receive information requests, including all active email addresses.

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@justice.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

Ben Tomes
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF