

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 January 2013

Public Authority: Royal Borough of Kingston upon Thames
Address: Guildhall
High Street
Kingston upon Thames
KT1 1EU

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Kingston upon Thames (the council) regarding written communications passing between two named individuals employed by the South London Sub Regional Unit and a named individual employed by the London Borough of Croydon during a specific period of time.
2. The Commissioner's decision is that the council failed to respond to the request and therefore breached its obligations under section 10 of the FOIA. The Commissioner requires the council to provide a substantive response to the complainant either disclosing the information or issuing a valid refusal notice under section 17 of the FOIA.
3. 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 FOIA and may be dealt with as a contempt of court.

Background

4. In 2007 the Directors of Children's Services of five London boroughs set up a shared service called the South London Sub Regional Unit working on behalf of the London Boroughs of Bromley, Merton, Kingston upon Thames, Richmond and Sutton.

Request and response

5. On 12 March 2012, solicitors for the complainant wrote to the Royal Borough of Kingston upon Thames and requested information in the following terms:
6. *"The Applicant requests all information (howsoever stored) held by or on behalf of the Royal Borough of Kingston-upon-Thames ("Kingston") as detailed below. Insofar as Kingston seeks to withhold relevant information, please confirm which exemption is being relied upon:*
 1. *Copies of all correspondence, emails, notes, memoranda and similar documents passing between (1) [named person and named title] and [named person and named title] and (2) [named person and named title], London Borough of Croydon during the period from 1 November 2010 to 12 July 2011."*
7. The complainant received no response from the council, other than an acknowledgement.

Scope of the case

8. The solicitors on behalf of the complainant contacted the Commissioner on 30 April 2012 to complain about the way the request for information had been handled.
9. The Commissioner wrote to the council on 19 June 2012 reminding it of its obligations under the FOIA to respond to requests within 20 working days of receipt. This letter was acknowledged by the council.
10. He wrote again to the council on 27 July 2012 in the same vein and on 17 October 2012 asking why it had failed to respond to the complainant and requesting that, if a response had been sent, the council needed to provide full details, and copies of any response(s) sent to the applicant.
11. The council responded by suggesting that the complexity of the case due to ongoing litigation meant that it was still considering issues of legal professional privilege. However, no exemption was explicitly cited and no further response has been issued to date.

Reasons for decision

12. Sections 1 and 10 of the FOIA provide a general right of access to recorded information held by public authorities. These sections state

that, when a written request for information is made, the public authority must state whether it holds that recorded information within 20 working days. If it does, it must provide the information within that timeframe unless a valid reason for not doing so exists under the FOIA. If such a reason does exist, a refusal notice should be issued in accordance with section 17 of the FOIA, again within 20 working days.

13. By failing to respond to the request at all, the council breached section 10 of the FOIA.

Other matters

14. The Commissioner is concerned at the delays experienced in this case. The council has seemingly made no attempt to keep the solicitors on behalf of the complainant informed in relation to the protracted delay. The request was submitted on 12 March 2012 and, apart from an acknowledgment to the Commissioner and an email four months later suggesting that there were complexities behind this request due to ongoing litigation and the discovery process, the council has communicated inadequately.

Right of appeal

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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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