

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 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 has requested information which concerns the procedures followed by Cheshire West and Chester Council in responding to his previous requests for information.
2. The Commissioner's decision is that Chester West and Chester Council has breached section 10 of the Freedom of Information Act by failing to fully respond to the complainant's request within the twenty working day compliance period.
3. The Commissioner requires the public authority to take no further action in this matter.

The complainant's request

4. On 4 August 2015, the complainant wrote to Chester West and Chester Council ("the Council") and requested information in the following terms:

"I hereby request that the council provide copies of the formal document withdrawal request(s) (made in accordance with the Council's document withdrawal procedure on 14th November 2014) by the Planning Department to Records Management. It is my understanding that this document request was made by [a named person] and was recorded by the Records Management Service.

I also request copies of any and all other information/correspondence exchanged between the Planning Department and Records

Management in relation to this document withdrawal request of 14th November 2014."

Background to the request

5. The complainant wrote to the Council on 13 November 2014, seeking access to two planning application files under references 2/3/4710 and 2/3/4836.
6. The two applications relate to Mill View Primary School which abuts the complainant's property.
7. The Commissioner understands that the Council was unable to find the file associated with application 2/3/4710, but the complainant was given access file 2/3/4836.
8. The complainant's request, which is outlined above, has flowed from the Council's failure to provide him with the contents of file 2/3/4710, which the complainant asserts the Council must hold. The complainant has made a separate complaint to the Commissioner about that matter and this will be dealt with in a separate notice.

Scope of the case

9. The complainant contacted the Commissioner on 10 September 2015 to complain about the Council's failure to respond to his request.
10. The Commissioner wrote to the Council on 24 and 29 September to provide a copy of the complainant's request and ask whether a response had now been sent to the complainant.
11. The Council responded to the Commissioner's enquiry, also on 29 September, advising him that it had answered the complainant's request on 14 September and had apologised for its delay. The Council's response stated:

"The Council acknowledges that it has failed to respond to this request in time and is therefore in breach of Regulation 5(2) of the EIR as the Council has taken longer than 20 days to respond and has not informed you that your request is either complex or voluminous, the criteria for which the time limit for compliance can only be legitimately be extended under the EIR. The Council offers its apologies for this delay and can confirm that this has been caused by the Council dealing with a high volume of requests and correspondence from the Information Commissioner and yourself, all of which relate to Mill View Primary School, meaning that some correspondence has been overlooked."

12. The Council's response referred the complainant to an investigation report made by the Council in respect of two other requests for information made by the complainant. This report was sent to the complainant on 18 August along with the information which he asked for in his request of 4 August (above), with the exception of one chain of emails which was subsequently provided on 14 September.
13. The complainant seeks a decision notice on the grounds that the Council had not responded to his request of 4 August within the compliance period provided by the EIR. The complainant considers that, "to claim that a volume of requests has caused some correspondence to be overlooked" is symptomatic of a serious failure in administrative procedures and systems.

Reasons for decision

14. The Council has dealt with the complainant's request under the Environmental Information Regulations 2004 ("the EIR") on the apparent grounds that the request concerns the complainant's access to planning records.
15. The Commissioner does not agree with the approach taken by the Council to this request: The information which the complainant seeks relates to the Council's procedures for withdrawing information from its archives and records. The information requested by the complainant fails to satisfy the definition of 'environmental information' which is provided by Regulation 2 of the EIR and therefore the request should have been dealt with under the provisions of the FOIA.
16. Section 1(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."
17. Section 10 of the FOIA requires a public authority to comply with section 1(1) not later than the twentieth working day following its receipt of the request.
18. An examination of the chronology and facts of this case reveals that the Council had predominantly complied with the complainant's request on 18 August, at the point when it sent the complainant its report and

associated information, in respect of the complainant's other requests and complaints.

19. Nevertheless, as the Council concedes, a further piece of information relevant to the request – a single chain of emails was subsequently provided on 14 September.
20. It is in respect of the Council's late provision of this chain of emails, after the twenty working day compliance period, that the Commissioner must find that Council has contravened section 10 of the FOIA.

Other matters

21. The Council has pointed out to the Commissioner that it apologised to the complainant for the delay in fully responding to his request and also that the complainant has not asked the Council to review its handling of the request.
22. The Commissioner accepts that the apology given to the complainant is genuine and was given in good faith. Likewise he notes that the majority of relevant information was provided to the complainant within the compliance period provided by the FOIA, albeit in response to his other requests and complaints.
23. The Commissioner has seen no evidence which corroborates the complainant's assertion that the Council has inadequate administrative procedures and systems: The Commissioner therefore rejects this assertion.
24. In consideration of the above, the Commissioner has decided to take no further action in respect of this matter.

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
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Water Lane
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SK9 5AF