

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2015

Public Authority: Newcastle Under Lyme Borough Council
Address: Civic Offices
Merrial Street
Newcastle Under Lyme
ST5 2AG

Decision (including any steps ordered)

1. The complainant has requested information from Newcastle Under Lyme Borough Council (the council) relating to a specified business premises. The council has responded to the request, but the complainant requested a decision notice.
2. The Commissioner's decision is that the council has complied with section 10 of the FOIA as the response was provided within 20 working days.
3. As there has been no breach of the FOIA, the Commissioner does not require the council to take any steps.

Request and response

4. On 21 April 2015, the complainant wrote to the council. His letter contained the following requests for information:

"Given the report of a suspected offence in this letter (which is being copied to the HSE) then please let me know within 48 hours of this email being sent what action if any you intend to take in this regard and if you are not going to take any action then please promptly provide full reasons why not..."

Given this online admission then please let me promptly know (within 48 hours of this email being sent) what action your Council is going to take in this regard and if no action is going to be taken then why not

and please provide full reasons why not particularly given that these admitted late night openings are taking place in a residential area and having a detrimental effect on the amenity of the area not least because of the anti social behaviour that business and the [two named individuals] attract and the fact that they are not complying with planning legislation/conditions...

Please confirm whether the Council have provided both directly and indirectly any sort of funding to [two named individuals] in connection with the operation of the business known as [Business name] operating from [Specified address] and if so provide full details including copies of all documentation and copies of all recordings of telephone conversations made by your Council in regard to such funding. If the Council have not provided such funding but are aware of it being provided to [two named individuals] in connection with the operation of the business known as [Business name] operating from [Specified address] then the Council is to provide full details including copies of all documentation and copies of all recordings of telephone conversations made by your Council in regard to such funding."

5. The council responded on 28 April 2015 under the reference 5004. The council directed the complainant to ask for an internal review if he was unhappy with the response.

Scope of the case

6. The complainant contacted the Commissioner about this request on 10 June 2015. He alleged that the council had not yet responded to his request and asked the Commissioner to serve a formal decision notice to record the alleged non-compliance.

Reasons for decision

7. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "no later than the twentieth working day following the date of receipt".
8. The Commissioner is in possession of the council's response to the complainant dated 28 April 2015. He finds that this response was provided to the complainant within the statutory time frame of 20 working days.
9. The Commissioner's decision therefore is that the council has dealt with the request for information in accordance with the FOIA. It has not

breached section 10(1) of the FOIA as alleged by the complainant as response to the request was provided within the statutory timeframe of 20 working days.

10. The Commissioner notes that the complainant stipulated to the council that he will only read correspondence sent to him by solicitors at the council, and that:

"Since 2014 I have repeatedly stated in my communications to the Council that any communications sent to me by the Council should come from the Council Solicitors I named and I therefore made it clear that any communications from any other such persons from the Council was unsolicited and unwanted; therefore any subsequent communications that were sent to me by any other persons from the Council have amounted to harassment."

The Commissioner would like to make it clear that the FOIA does not provide for requesters to demand who will respond to their request. It is clear to the Commissioner that the response issued in this case came from the council, and is therefore a valid response for the purposes of the FOIA.

11. The Commissioner notes that if the complainant is now dissatisfied with the council's response, the correct course of action is for him to request that the council conducts an internal review.

Other Matters

12. Section 50(1) of the FOIA requires the Commissioner to make a decision in relation to complaints he receives about public authorities' compliance with the FOIA when dealing with requests for information. However, under section 50(2)(c) the Commissioner has the right to refuse to make a decision if it appears to him that a particular application is frivolous or vexatious.
13. This decision notice now represents one of five¹ in which the complainant has demanded that the Commissioner serve a decision notice on the council to record non-compliance with section 10 of the FOIA, when the council has in fact responded in time, and has therefore complied with section 10.

¹ FS50576890, FS50577181, FS50578226, FS50585860 and FS50585863

14. As noted above, it appears to the Commissioner that the complainant is refusing to accept or read correspondence that is not sent to him by council solicitors. The council has a single point of contact in operation for the complainant. She has been responding to the requests on behalf of the council, but as she is not a solicitor, it appears that the complainant is acting as though he has not received any correspondence from her.
15. In addition to this, the complainant alleges that he has not received copies of the previous decision notices that have been served in relation to his complaints. Again, the Commissioner suspects that this is due to the fact that the copy decision notices were not sent by solicitors, but by the Commissioner's case officers in the casework department, as is standard procedure.
16. The Commissioner therefore believes this represents a frivolous request for a decision notice. In future the Commissioner will consider whether it is appropriate for him to exercise his discretion under section 50(2)(c) to refuse to make a decision in relation to any complaint about a request of a similar nature from the complainant.

Right of appeal

17. 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

18. 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.
19. 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
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Wycliffe House
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SK9 5AF