

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 November 2019

**Public Authority:** London Borough of Bromley  
**Address:** Bromley Civic Centre  
Stockwell Close  
London  
BR1 3UH

#### **Decision (including any steps ordered)**

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1. The complainant has requested the costs associated with a specified legal action undertaken by the Council.
2. The Commissioner's decision is that London Borough of Bromley ("the Council") failed to respond in accordance with the Act to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response, under the FOIA, to the request.
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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On or before 2 March 2018, the complainant wrote to the Council and requested information in the following terms:

*"Your organisation chose to initiate care proceedings against me and my wife [redacted] in relation to our son [redacted] who has complex special education needs. From the time all correspondence around these proceedings began (July 2017) until the date your organisation realised it had no case at all (and thus withdrew its proceedings ten minutes before it was due to go to court) you instructed external Counsel in the form of a specialist Barrister and also a QC. I am requesting full disclosure of the external legal fees (and any other external fees) that your organisation has spent specifically in relation to these care proceedings. The Social Worker who brought these proceeding to the court is called [redacted] if that helps."*

6. The Council acknowledged the request on 2 March 2018 and provided a reference number.

7. The complainant chased the Council for a response and in an undated letter regarding a general complaint about the same topic, the Council stated that it did not have a record of the request. It also stated:

*"...that information would not be disclosable under the Freedom of Information Act as it is not information that would be published, in the same way that the Council is not automatically entitled to details of your own legal costs."*

## Scope of the case

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8. The complainant contacted the Commissioner on 8 February 2019 to complain about the failure, by the Council, to respond substantively to the request.
9. As the Council had attempted to handle the request as part of a complaint and not as a request for information, the Commissioner invited the Council to review its handling of this request and either provide the requested information or issue a refusal notice which conforms with section 17 of the FOIA.
10. On 27 March 2019 the complainant contacted the Commissioner to confirm that he had not received any further correspondence from the Council.

11. To date, the Commissioner has not received any engagement from the Council.
12. The Commissioner has considered whether this request should be handled under the Data Protection Act 1998 as it relates to action taken against the complainant. In line with the First Tier Tribunal decision in *Wilby v Information Commissioner & Police and Crime Commissioner for North Yorkshire EA/2017/0076<sup>1</sup>*, the Commissioner has determined that the specific information requested is not the personal data of the complainant. As stated in the above Tribunal decision "*The identity of the claimant was immaterial; the information related to the quantum of expenditure*".
13. The scope of this notice and the following analysis is to consider whether the Council has complied with section 10 of the FOIA.

### Reasons for decision

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14. 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.*

15. Section 8(1) of the FOIA states:

*In this Act any reference to a "request for information" is a reference to such a request which –*

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

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<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2105/Wilby,%20Neil%20EA-2017-0076.pdf>

16. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
17. Section 10 of the FOIA states that responses to requests made under the FOIA must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
18. The Commissioner has been provided with a copy of the acknowledgement email and she has contacted the Council by telephone to confirm that the email address she has written to is valid. She has no reason to believe, therefore, that the Council has not received either the request or her correspondence regarding this complaint.
19. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a substantive response to the request within 20 working days, the Council has breached section 10 of the FOIA.
20. She therefore requires the Council to provide a substantive response to request for information set out at paragraph 5.

### **Other matters**

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21. During the course of this complaint, the Commissioner confirmed to the complainant that should the Council confirm that it holds information, it would, by default also confirm that it undertook legal proceedings involving the named individuals. The Commissioner explained that disclosure under the FOIA is disclosure to the world at large and asked the complainant to consider the consequences of pursuing a response to this request.
22. The complainant confirmed that he consents to the disclosure of his personal data and the personal data of his dependent(s) under the FOIA if this means he can obtain a substantive response to the request for information.
23. The Council should, therefore, consider the complainant's right to consent when deciding how to respond to the request for information. It should also satisfy itself that this consent is explicitly given by the parties named in the request.

**Right of appeal**

24. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.

26. 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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**