

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2021

Public Authority: Middlesbrough Borough Council

Address: Vancouver House
Gurney Street
Middlesbrough
TS1 1JL

Decision (including any steps ordered)

1. The complainant requested information relating to the appointment of a PR consultant at the council. By the date of this notice Middlesbrough Borough Council (the Council) had failed to provide a substantive response to this request.
2. The Commissioner's decision is that the Council failed to respond 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 step to ensure compliance with the legislation.
 - The Council must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The Council must take this step 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 27 November 2020, the complainant wrote to the Council and requested information in the following terms:

"I wish to make a freedom of information request with regard to the following, the response should be sent to [redacted]. Where I ask for records of communication please regard this as all letters, emails, texts and all other forms of communication including whats app and other platforms.

In addition to the council email, please also include, where appropriate, the email used by Mr Preston, [redacted] within the scope of this request where they have been used in connection with council business. Similarly any Middlesbrough council related matters communicated via his personal mobile phone including text, whats app and other communication platforms.

The scope should also include, where appropriate, messages concerning council business communicated via personal email address, whats app, text etc used by [redacted] in connection with his various roles with Middlesbrough Council.

1. With regard to the Media and PR Consultant post [redacted] secured with a start date of October 1 2019, the following details

i. A copy of the advert for this post and details of where the post was advertised (internally and publicly) and for how long.

ii. The names and posts of the individuals who sat on the interview panel.

iii. How many people applied for the post and how many were interviewed.

2. Between August 2019 and May 2020 any communications between the former Marketing and Communications manager [redacted].

3. Between August 2019 and May 2020 any communications between the former Marketing and Communications manager [redacted].

4. Between May 5 2019 and June 30 2020, any communications involving [redacted], the Mayor Andy Preston, [redacted] concerning lovemiddlesbrough magazine or other council publications – proposed or existing.

5. *A copy of the written notice by [redacted] to the Monitoring Officer alerting him/her to the fact his company planned to submit or had submitted a bid for the tender for lovemiddlesbrough magazine.*
 6. *A copy of the written notice by [redacted] to the Monitoring Officer alerting him/her to the fact his company Resolution Media and Publishing had in 2020 secured payments from the council for £2,500 with regard to the Tees Tech Awards and a payment of £3,750 for an annual advertising package.*
 7. *Details of any payment made to [redacted] by Middlesbrough Council since May 2019, including details of the work undertaken and who commissioned it.*
 8. *The names and posts of the individuals on the panel that awarded the lovemiddlesbrough contract MBC 000237A to Resolution Media and Publishing.*
 9. *I am aware that council employee [redacted] company sought quotes from suppliers in order to submit a bid for the original lovemiddlesbrough magazine commissioning process deadline of February 3 2020. Why was a bid not submitted? Please supply any documents or communication by [redacted] to anyone within the council regarding this."*
6. The Council acknowledged the request on 22 December 2020 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 28 January 2021 to complain about the failure, by the Council, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the Council on 8 March 2021 to highlight the outstanding response. She requested that the Council respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. The complainant contacted the Commissioner on 22 March 2021 to request a decision notice considering the Council's compliance with the FOIA.
10. 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

11. 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.*

12. 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.*

13. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

14. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

15. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached section 10 of the FOIA.

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@hmcts.gsi.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
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