

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2023

Public Authority: Newcastle City Council
Address: Civic Centre
Newcastle upon Tyne
NE1 8QH

Decision (including any steps ordered)

1. The complainant requested information relating to a telecommunications mast in Hazlerigg.
2. Newcastle City Council (the Council) ultimately provided the information it holds that falls within the scope of the request.
3. The Commissioner's decision is that the Council breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 21 October 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like to request electronic copies of all conversations, phone calls, emails and meetings that have taken place between Newcastle City Council and any other interested parties in relation to the installation of the telecommunications mast on land off Coach Lane in Hazlerigg. This should include any pre-application discussions around planning application 2021/1408/01/NOT and any documents associated with the subsequent appeal. This should include all correspondence received between 1st January 2021 and 20th October 2022".

6. The Council responded on 24 November 2022. It said that it was unable to retrieve relevant historic email correspondence and that there was no relevant correspondence on the application file.
7. Following an internal review the Council wrote to the complainant on 10 January 2023. It revised its position, confirming that it did hold information within the scope of the request. It provided that information to the complainant, with some aspects blocked out to prevent disclosure of personal information.
8. During the course of the Commissioner's investigation, the Council revisited its handling of the request and provided further information to the complainant.
9. The following analysis considers whether the Council complied with section 10(1) of FOIA.
10. The Commissioner has addressed his concerns about the way the Council disclosed some of the requested information to the complainant in 'Other matters' below.

Reasons for decision

Section 1 general right of access

11. Section 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".
12. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
13. The Commissioner considers that the series of searches ultimately undertaken by the Council, and the enquiries it made, to locate the information it holds that falls within the scope of the request, were both necessary and proportionate.
14. However, from the evidence he has seen, it is clear that, by failing to conduct those searches in a timely manner, it failed to provide the complainant with the requested information within 20 working days of

the request. Therefore the Council did not deal with the request for information in accordance with FOIA.

15. By failing to provide the requested information within the statutory time limit, the Commissioner finds that the Council breached section 10(1) of FOIA.

Other matters

Records management

16. When a public authority receives a request, its first task is usually to determine whether it holds the requested information. In many cases it will be simple to locate information, particularly if the public authority practices good records management.
17. However, in this case the Council clearly had difficulty in determining whether or not it holds the requested information. The Commissioner understands that this was due, in part, to the Council needing to gain access to email accounts for staff who have left the authority.
18. The code of practice issued under section 46 of FOIA (the 'section 46 code') sets out the practices which public authorities should follow in relation to the creation, keeping, management and destruction of their records.
19. Failure to conform to the section 46 code is not, in itself, a breach of FOIA or the EIR; however the Commissioner promotes the observance of the code.
20. The Commissioner wishes to refer the Council to the section 46 code and expects that it will have due regard to its recommendations in future.

Redaction

21. The Commissioner is concerned to note the technique used by the Council in this case to block out personal information from some of the information it disclosed to the complainant.
22. He recommends his guidance¹ 'How to disclose information safely' to the Council.

¹ [How to disclose information safely \(ico.org.uk\)](https://ico.org.uk/for-the-public/transparency/how-to-disclose-information-safely/)

Right of appeal

23. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

**Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**