

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 25 February 2010

**Public Authority:** Bolton Council  
**Address:** Town Hall  
Civic Centre  
Bolton  
Lancashire  
BL1 1RU

### Summary

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The complainant submitted an information request to the Council for the names of all staff empowered to issue cautions under Part G of the Council's scheme of delegation. The Council responded by releasing the names of Chief Officers only. It refused to disclose other staff names, as it considered this information was exempt from disclosure under section 40 of the Act. Following the Commissioner's intervention the remaining information was subsequently released. In terms of the handling of this request, the Commissioner found that the Council failed to comply with section 1(1)(b) of the Act, as it did not provide all the requested information within the statutory time for compliance. He also concluded that the Council breached section 10(1) of the Act in failing to comply with section 1(1) (b) within twenty working days. In addition, the Commissioner found that the Council had breached sections 17(1) and 17(7) of the Act by failing to cite and explain the exemption claimed, failing to inform the complainant of his right to request an internal review, failing to inform the complainant of his right to refer a complaint to the Commissioner under section 50 of the Act and for failing to issue its Refusal Notice within twenty working days of the receipt of the request.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## The Request

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2. On 24 April 2009 the complainant submitted the following information request to the Council:

"I would like to know how the process of the giving of a local authority caution works so would you provide under the Freedom of Information Act any/all the information you have about this process including policy and guidance documents.

Please provide the names of who is specifically empowered within the local authority to administer cautions and what 'Act' gives them the power to do so.

Please state if the local authority caution is recorded and if so where and for how long.

If for example during the course of the Council investigation a person is found to have committed criminal offences outside the remit of the local authority such as driving a taxi without appropriate insurance or a license what policies and/or procedures or DUTY do the Council have in place to report such a matter to the police.

In the case of the caution recently given to [named Councillor] was the CPS involved in the decision making when it was decided a caution would be appropriate in his case?

Please provide the name of who it was that made the decision to give a caution in this case and their rank or job title."

3. The Council responded on 5 June 2009. It provided answers to the majority of questions listed in the complainant's request and provided hyperlinks to documents which contained other relevant information.
4. The complainant requested an internal review (date unknown) of the information supplied to date. He reiterated that he required the names of those members of staff empowered within the Council to issue cautions. He also requested some additional information relating to the particular caution recently given to a named Councillor.
5. The Council completed its internal review and communicated its findings to the complainant on 15 July 2009. In relation to the names of members of staff empowered to issue cautions, the Council confirmed that it would release the names of Chief Officers only in due course. The names of other members of staff would not be disclosed, as it considered this information was exempt from disclosure under section 40(2) of the Act. The Council also advised that the additional information requested in respect of the recent caution against a named Councillor would be provided in due course.

6. The Council wrote to the complainant on 31 July 2009 to release the names of Chief Officers. It also provided the additional information the complainant requested in relation to the recent caution given to a named Councillor.

## **The Investigation**

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### **Scope of the case**

7. On 15 July 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's refusal to release the names of all staff empowered to issue cautions and its application of section 40 of the Act to those names being withheld.
8. All other elements of the complainant's original request were resolved prior to the Commissioner's investigation.

### **Chronology**

9. The Commissioner wrote to the Council on 13 August 2009 to request some additional information.
10. The Council responded on 10 September 2009. It clarified that it had released the names of Chief Officers empowered to issue cautions to the complainant. However, it remained of the view that the names of other officers in the Council were exempt from disclosure under section 40(2) of the Act.
11. The Commissioner wrote to the Council on 16 December 2009 to request more specific arguments in support of the exemption cited and detailed information relating to the seniority of those members of staff whose names had been withheld.
12. The Council responded on 25 January 2010. It advised that in light of the recently issued Decision Notice for case reference FS50259598 and more recent consultation with the officers whose names had been withheld, it was now withdrawing its reliance on section 40(2) and was willing to disclose the remaining information to the complainant.

## Analysis

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### Procedural Matters

#### Section 1

13. Although the Council informed the complainant on 5 June 2009 that it held the requested information. It failed to disclose all of the information the complainant requested within the statutory time for compliance.

#### Section 10

14. The complainant submitted his information request to the Council on 24 April 2009. However, the Council failed to supply all the information he requested within twenty working days following the receipt of the request. The Council therefore breached section 10(1) of the Act.

#### Section 17

15. The Council failed to issue its Refusal Notice within twenty working days. The Commissioner has therefore found that the Council was in breach of section 17(1) of the Act in this case.
16. The Council's Refusal Notice dated 5 June 2009 did not also meet the requirements as set out in section 17(1) and 17(7) of the Act. Although the Council withheld the names of all staff empowered to issue cautions at this point, it failed to state that fact, specify the exemption in question and why it applies. The Council also failed to inform the complainant of his right to request an internal review via its internal complaints procedure and of his right under section 50 to refer the matter to the Commissioner. The Commissioner has therefore found that the Council breached sections 17(1) and 17(7) of the Act in this case.

### Exemptions

17. As all requested information has now been disclosed, the Commissioner has not gone on to consider the Council's application of section 40(2) of the Act.

### The Decision

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18. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act for the following reasons:
  - the Council breached section 10(1) of the Act in failing to comply with section 1(1)(b) within twenty working days following the receipt of the request;
  - the Council breached section 17(1) of the Act by failing to issue its Refusal Notice within twenty working days of the receipt of the request;

- the Council also breached section 17(1) and 17(7) of the Act by failing to issue an adequate Refusal Notice.

## Steps Required

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19. The Commissioner requires no steps to be taken.

## Right of Appeal

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20. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 25<sup>th</sup> day of February 2010**

**Signed .....**

**David Smith**  
**Deputy Commissioner and Director of Data Protection**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Legal Annex**

### **Section 1(1)**

Provides 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.”

### **Section 10(1)**

Provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **Section 17(1)**

Provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

### **Section 17(7)**

Provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”