

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date 3 October 2011

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

Decision

1. The Commissioner's decision is that Bolton Metropolitan Borough Council has incorrectly applied Section 1 and Section 10(1) of the Act to the complainant's requests. It did not respond to his request within 20 working days providing him with the information he asked for or identifying the exemption it was relying upon to withhold the information.

Steps ordered

2. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOIA:
 - To respond to the complainant's request for information.

Request and response

3. On 12 January 2011 the complainant wrote to Bolton Council and requested information in the following terms:

"Please provide the name of the Environmental Services Monitoring Officer to whom you passed on my complaints to"

4. Bolton Council responded on the same date. It stated that the complainant would need to make his request to specific officers because it considered his complaint to be a formal complaint against the council. It provided the names of the officers to whom he should direct his complaint.
5. Following an internal review Bolton Council wrote to the complainant on 24 January 2011 stating again that he needed to send his complaint to the officers whose names it had provided him with.

Scope of the case

6. On 15 June 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated that the information he had requested had not been provided to him, and that the council had also not provided him with a response within the 20 working days which is required under the Regulations.

Reasons for decision

7. In general the Act requires an authority to respond to a request within 20 working days from the date that the request is received by the authority. Within that time period the authority must either disclose the information or explain to the requestor that an exemption applies. It must also explain which exemptions and why they apply.
8. The complainant's request followed a general complaint he had made about refuse collection. In a telephone conversation with a council officer following up on that general complaint the officer informed the complainant that his complaint had been passed to the Environmental Services Monitoring Officer. The complainant then asked for the name of that officer.
9. Subsequently, when the Commissioner contacted the council about the complaint it stated that it believed it had responded to his request. It recognised that its initial responses had been a mistake. It explained that the officer who received the request thought that it was part of the complainant's formal complaint against the actions of the council. He had not recognised it to be a freedom of information request. The complainant had therefore been directed to write to the individuals responsible for dealing with formal complaints about the councils actions and had closed the case at that point. The Commissioner notes however that the complainant did highlight his intention for the request

to be treated as a request under the Act in his email of 12 January 2011. He also clarified that it was a freedom of information request in the email subject title.

10. After this the complainant did not write to the council again until 17 May 2011.
11. The council says that once it realised that the complainant had made a freedom of information request it dealt with this. It says that it then clarified with the complainant that what he actually wanted was the name of the person who was dealing with his complaint rather than the name of the Environmental Services Monitoring Officer. It had explained to him that the Environmental Services Monitor is a relatively junior position within the council whose role does not directly involve dealing with customer complaints. It says that the complainant agreed on the telephone that that is what he wanted. The council says that it provided him with the name of the officer dealing with his complaint over during the course of that telephone call. It also emailed it to him on 3 June 2011 including the name of the officer involved. It also says that he was provided with the name in an early email dated 7 January 2011.
12. The Commissioner therefore asked the complainant if the council's argument was correct. The complainant said that the council had effectively told him that that is the information that he actually wanted, but he had not actually agreed that that was the case or amended his request in any way. He therefore considers that the council has not yet responded to his request.
13. The Commissioner is therefore left with a position where, if he takes the word of the council, it has provided the information to the complainant. If however he believes the complainant then there was no real agreement to amend the request, and so the council has yet to respond to the complainant. The Commissioner must however make his decision based on the evidence he has before him.
14. The council has not provided the Commissioner with any evidence demonstrating that the complainant agreed to amend his request. It did however provide a copy of the email which it sent to him dated 3 June 2011 which states:

"However, through a series of subsequent emails and also via a later clarifying conversation with (name of officer redacted) it has been ascertained that you require the person handling your complaint."

15. The complainant did not at that time raise an issue with the council over its response, but instead complained directly to the Commissioner.
16. The Commissioner considers that it may have been reasonable for the complainant to have clarified to the council that he had not agreed to amend his request, both during the telephone call and after receiving the council's email of 3 June 2011. He should have done this prior to making his complaint to the Commissioner. In its email to him the council also provided him with details of the officer to appeal to if he was unhappy with the council's decision. Nevertheless, the Commissioner also accepts that the council knew that it had provided the complainant with the name of the officer dealing with his complaint previously, but that he had still maintained that he wanted a response to his request.
17. On this basis, and on a direct reading of the facts, the written request was for the name of the Environmental Services Monitoring Officer and the council has not provided this to the complainant. Nor has it provided strong evidence demonstrating that the complainant agreed to amend his request as it was written.
18. The Commissioner's decision is therefore that the council failed to respond to the request within the 20 working days in which it is required to.
19. As there is no clear evidence to demonstrate that the complainant did amend his request he also finds that the council has not yet responded to the complainant's request.

Right of appeal

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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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
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